

No. 15068

United States
Court of Appeals
for the Ninth Circuit

BERNARD MITCHELL,

Appellant,

vs.

UNION PACIFIC RAILROAD CO., a Corpora-
tion; CHICAGO NORTHWESTERN RAIL-
ROAD CO., a Corporation,

Appellees.

Transcript of Record

Appeal from the United States District Court for the
Southern District of California
Central Division.

FILED

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PAUL P. O'BRIEN, CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS

Attorney for Appellant:

MONROE AND CHULA,
GEORGE H. CHULA, ESQ.,
800 North Broadway,
Santa Ana, California.

Attorney for Appellees:

MALCOLM DAVIS,
422 West Sixth Street,
Los Angeles 14, California.

In the District Court of the United States, Southern District of California, Central Division

No. 15634-T

BERNARD MITCHELL,

Plaintiff,

vs.

UNION PACIFIC RAILROAD CO., a Corporation; CHICAGO NORTHWESTERN RAILROAD CO., a Corporation; DOE 1, a Corporation; DOE 2, a Corporation, and DOES 3 and 4, Individuals,

Defendants.

COMPLAINT FOR DAMAGES

Comes Now the Plaintiff, Bernard Mitchell, and for Cause of Action Against the Defendants and Each of Them Alleges as follows:

I.

That plaintiff does not at the present time know the true names and capacities of the defendants named herein as Doe 1, Doe 2, Doe 3 and Doe 4, and sues said defendants under such fictitious names for the reason that he cannot ascertain at the present time their true names and capacities; that your plaintiff asks leave of the Court to amend this Complaint by inserting the true names of the defendants Doe 1, Doe 2, Doe 3 and Doe 4 when the same have been ascertained. [2*]

*Page numbering appearing at foot of page of original Certified Transcript of Record.

II.

That the Union Pacific Railroad Company is a corporation duly authorized and engaged in interstate commerce and duly authorized to do business in the States of California, Iowa and Illinois, and plaintiff is informed and believes and upon such information and belief alleges that said corporation is duly authorized to do business in each and every state in the United States.

III.

That the Chicago Northwestern Railroad Company is a corporation duly engaged in interstate commerce and duly authorized to do business in the states of California, Iowa and Illinois, and plaintiff is informed and believes and upon such information and belief alleges that said corporation is duly authorized to do business in each and every state in the United States.

IV.

That Bernard Mitchell is a citizen of Ireland and a resident of the State of California, and that at the times and places set forth in this Complaint, said plaintiff was in the process of traveling to the State of California from his residence and home in Ireland to California.

V.

That at all times set forth in this Complaint, the plaintiff was the sole owner of a certain fox terrier dog named Pudsy.

VI.

That the fox terrier dog named Pudsy owned by the plaintiff herein had been specially raised and trained by the plaintiff through years of patience, effort and the expenditure of great sums of money and large amounts of time by the plaintiff herein to be an educated trick dog used for [3] educational and entertainment purposes.

VII.

That the purpose of the plaintiff coming to the State of California was to place said dog in the entertainment field by exhibiting said dog at personal appearances in the State of California and throughout the United States and by placing of said dog on television and in the movies.

VIII.

That the plaintiff had exhibited said dog in the country of Ireland for money, and that through the use of said dog, plaintiff had received large amounts of money and publicity to the effect that said dog was the "Wonder Dog of Europe."

IX.

That on or about the 24th day of June, 1952, at approximately 6:00 p.m. of said date, said plaintiff delivered said dog named Pudsy to the defendants herein and each of them in the City of Chicago, State of Illinois, and that said defendants and each of them agreed to convey said dog on the same train upon which the plaintiff was riding to the City of Los Angeles, California.

X.

That at all times mentioned herein, the defendants were advised that said dog was a valuable exhibition dog trained for educational and entertainment purposes, and that said plaintiff was advised by the agents of the defendants that an agent of the defendants would be in charge of the railroad baggage car in which the dog Pudsy was to travel and present therein during the trip to Los Angeles, and that said agent would care for the feeding, watering, providing of air and other essentials necessary to keep and preserve safely the dog owned by the plaintiff.

XI.

That plaintiff was also advised by agents of the [4] defendants that immediately after boarding the train, he would be allowed access to the car in which it was necessary for the plaintiff's dog to travel, and that said plaintiff would have an opportunity to feed, water and care for the said dog herein; that relying upon said statements and acts the plaintiff allowed said animal to be placed in the custody of the defendants.

XII.

That shortly after plaintiff boarded said train, he requested access to the railroad car in which his dog was being carried and was advised that no one was in charge of said car; that said car was sealed and that no one could enter said car; that plaintiff advised numerous of the defendants agents that his dog Pudsy should not be locked up alone without

food and water, and that said plaintiff begged and entreated said agents of the defendants numerous times to allow him access to said baggage car to feed, water and check the ventilation for said dog as it had been promised he would be able to do; that the agents of the defendants and each of them steadfastly and wrongfully denied plaintiff access to his dog and did not provide a party in said car to take care of the plaintiff's dog as had been promised.

XIII.

That the agents of the defendants well knew that there was no one in said baggage car to feed, water and check the ventilation, and well knew that the plaintiff would not be able to visit with and care for his said dog.

XIV.

That plaintiff relied upon the statements and actions of defendants' agents to the effect that he would be able to care for his dog and that someone would be present to care for his dog, and upon such reliance, plaintiff delivered [5] his dog to the care and custody of the defendant; that if said statements and actions had not been made as set forth above, the plaintiff would not have allowed his dog to be transported by the defendants.

XV.

That while en route said dog, due to lack of care, food, water and ventilation and lack of someone in said baggage car to care for the said dog, and by reason of the failure of said defendants to have an

attendant care for said dog or to allow plaintiff to care for said dog, said dog named Pudsy died.

XVI.

That as a direct and proximate result of the fraud, concealment and subsequent loss of plaintiff's dog, plaintiff has been damaged in the sum of approximately \$100,000.00.

XVII.

That the acts and actions of the defendants and each of them as set forth above were made wilfully and wantonly with a flagrant indifference to the consequences of the defendants' acts, and that by reason of said wilfullness, wantonness and flagrant indifference, plaintiff demands as exemplary punitive damages the sum of approximately \$100,000.00.

Comes Now the Plaintiff and for a Second Cause of Action Alleges as follows:

I.

Plaintiff hereby makes reference to Paragraphs I to XIII, inclusive, of the First Cause of Action and hereby incorporates the same as though fully set forth.

II.

That the defendants and each of them while having control and possession of said dog named Pudsy, negligently failed to give proper attention to said animal by giving it the necessary food, water, light and ventilation and furnishing an attendant. [6]

III.

That as a direct and proximate result of defendants' negligence as aforesaid, the dog of the plaintiff named Pudsy died while en route and while in the possession of the defendants.

IV.

That as a direct and proximate result of the death of said dog named Pudsy, plaintiff has been damaged in the sum of \$100,000.00.

Comes Now the Plaintiff and for a Third Cause of Action Alleges as follows:

I.

Plaintiff hereby makes reference to Paragraphs I to XIII, inclusive, of the First Cause of Action and by such reference hereby incorporates the same herein as though fully set forth.

II.

That while plaintiff's dog was in the possession of the defendant, the defendants' wilfully and wantonly and with a flagrant indifference to the consequences failed to furnish suitable care, supervision for said dog while in transit and to furnish proper food, water, light and ventilation; that said defendants wilfully, wantonly and flagrantly failed to have an attendant in charge of the baggage car and that said defendants' wilfully, wantonly and flagrantly refused to allow plaintiff to care for his dog as promised, and that by reason of said wilful, wanton

and flagrant indifference to the consequences, said dog of the plaintiff died.

III.

That as a direct and proximate result of the death of said plaintiff's dog, plaintiff was damaged in the sum of \$100,000.00, and that by reason of the wilful, wanton and [7] flagrant indifference to the consequences of the defendants, plaintiff demands the sum of \$100,000.00 as exemplary and punitive damages herein.

Wherefore, plaintiff prays judgment as follows:

1. The sum of \$100,000.00 on the first, second and third causes of action.
2. The sum of \$100,000.00 as exemplary and punitive damages on the second and third causes of action.
3. For costs of suit and for such other and further relief as to the Court may seem proper in the premises.

MONROE, CHULA & LINES,

By /s/ GEORGE H. CHULA.

Duly verified.

[Endorsed]: Filed June 18, 1953. [8]

[Title of District Court and Cause.]

ANSWER OF CHICAGO AND NORTH WESTERN RAILWAY COMPANY

Defendant, Chicago and North Western Railway Company, sued and served in the above-entitled ac-

tion as "Chicago Northwestern Railroad Co., a Corporation," for answer to plaintiff's complaint admits, denies and alleges as follows:

Answer to First Cause of Action

I.

Said defendant has no knowledge, information or belief sufficient to enable it to answer the allegations of Paragraphs IV, V, VI, VII and VIII of the First Cause of Action and basing its answer on that ground said defendant denies said allegations and each of them. [10]

II.

Said defendant admits the allegations of Paragraph IX of the First Cause of Action so far as the same pertain to this defendant.

III.

Said defendant denies the allegations of Paragraphs X, XI, XII, XIII, XIV, XV, XVI and XVII of the First Cause of Action, and each of them, and specially denies that plaintiff suffered damage in the sum of One Hundred Thousand Dollars (\$100,000.00), or any other sum or amount whatsoever.

IV.

For a Separate and Second Answer and Defense to the First Cause of Action, said defendant alleges that prior to any of the times mentioned in the complaint and during all such times said defendant had duly filed with the Interstate Commerce Com-

mission and had published and kept open to public inspection, all in the manner prescribed by the Federal Interstate Commerce Act and by the rules and regulations of the Interstate Commerce Commission, its Western Baggage Tariff No. 25-13, effective June 15, 1948, Rule 7-G, of which was and is as follows:

“The limit of value on an uncrated dog will be twenty-five dollars (\$25.00). Single shipments exceeding that value must not be accepted for transportation in baggage service. This does not preclude a passenger making two or more shipments, each shipment separately valued at not exceeding twenty-five dollars (\$25.00). The limit of value on one or more dogs, shipped in one crate, will be twenty-five dollars (\$25.00), unless the shipper declares an increased valuation at time of checking and pays one dollar (\$1.00) for each one hundred dollars (\$100.00) or fraction thereof over the carrier’s liability of twenty-five dollars (\$25.00). Where passengers make shipment of two or more crates, a separate valuation will [11] be required on each crate. Declaration of value exceeding three hundred dollars (\$300.00) per crate will not be permitted.”

That the plaintiff did not declare a greater value than twenty-five dollars (\$25.00) for the said dog, nor did the plaintiff make any payment or offer of payment of the rate and charge set forth in said tariff for any such declaration of greater value. That on the contrary, the plaintiff, in order to se-

secure the minimum rate for the transportation of said dog, signed a declaration that the said dog was valued at not exceeding twenty-five dollars (\$25.00) and in the case of loss or damage to the dog, plaintiff would not make claim for a greater amount than that sum. A photostatic copy of said declaration of value, executed by the plaintiff as aforesaid, is marked Exhibit A, attached hereto and by this reference made a part hereof.

That under the provisions of the Federal Interstate Commerce Act it is unlawful for the defendant to deviate from the provisions of said tariff and in particular from the provisions of Rule 7-G thereof hereinabove quoted and, therefore, if plaintiff should be entitled to a recovery in any sum whatsoever on account of the death of said dog, such recovery is limited to the sum of twenty-five dollars (\$25.00).

Answer to Second Cause of Action

I.

For answer to the allegations of Paragraphs IV, V, VI, VII and VIII of the First Cause of Action, as the same are incorporated by reference into the Second Cause of Action, said defendant refers to and incorporates herein the allegations of Paragraph I of its Answer to First Cause of Action.

II.

Said defendant admits the allegations of Paragraph IX of the First Cause of Action, as the same are incorporated by reference [12] into the Second

Cause of Action, limiting said admission, however, to such allegations of said paragraph as are applicable to this defendant.

III.

Said defendant denies the allegations of Paragraphs X, XI, XII and XIII of the First Cause of Action, as the same are incorporated by reference into the Second Cause of Action.

IV.

Said defendant denies the allegations of Paragraphs II, III and IV of the Second Cause of Action, and each of them.

V.

For a Second and Separate Answer and Defense to the Second Cause of Action, said defendant refers to and here incorporates the allegations of Paragraph IV of its Answer to First Cause of Action.

Answer to Third Cause of Action

I.

For answer to the allegations of Paragraphs IV, V, VI, VII and VIII of the First Cause of Action, as the same are incorporated by reference into the Third Cause of Action, said defendant refers to and incorporates herein the allegations of Paragraph I of its Answer to First Cause of Action.

II.

Said defendant admits the allegations of Paragraph IX of the First Cause of Action, as the same are incorporated by reference into the Third Cause

of Action, limiting said admission, however, to such allegations of said paragraph as are applicable to this defendant.

III.

Said defendant denies the allegations of Paragraphs X, XI, XII, and XIII of the First Cause of Action, as the same are incorporated by reference into the Third Cause of Action.

IV.

Said defendant denies the allegations of Paragraphs II and [13] III of the Third Cause of Action, and each of them.

V.

For a Second and Separate Answer and Defense to the Third Cause of Action, said defendant refers to and here incorporates the allegations of Paragraph IV of its Answer to First Cause of Action.

Wherefore, said defendant prays judgment for its costs and for all proper relief.

E. E. BENNETT,

EDWARD C. RENWICK,

MALCOLM DAVIS,

JACK W. CRUMLEY,

DONALD M. LADD, JR.,

By /s/ MALCOLM DAVIS,

Attorneys for Defendant, Chicago and North Western Railway Company. [14]

EXHIBIT A

[Baggage Tag]

Form 106

Chicago and North Western Railway Co.

Station

(Date): 6-14, 19.....

Valuation of Baggage

The property covered by checks numbered
5114

Is Valued at Not Exceeding
\$25
and in case of loss or damage to such property,
claim will not be made for a greater amount.

Number of Passengers *Bernard Mitchell*

Amount Paid *10071 Garden Grove Blvd.*

(Signed) *Garden Grove,*

Address *California.*

Number and Street

.....

City

State

Baggage of excess value will be charged for sub-
ject to tariff regulations.

[Matter set in italics appeared in longhand on the
photostat of the original tag.]

Duly verified.

Affidavit of service by mail attached.

[Endorsed]: Filed November 2, 1953. [15]

[Title of District Court and Cause.]

MOTION FOR SUMMARY JUDGMENT

The defendants Chicago and North Western Railway Company and Union Pacific Railroad Company hereby move the Court to enter summary judgment for the plaintiff in the sum of Twenty-five Dollars (\$25.00), in accordance with the provisions of Rule 56 of the Rules of Civil Procedure, on the grounds that the pleadings and affidavits hereto attached and marked Exhibits A, B and C show that the plaintiff is entitled to judgment as a matter of law in the sum of Twenty-five Dollars (\$25.00) only.

Dated: December 22, 1953.

E. E. BENNETT,
EDWARD C. RENWICK,
MALCOLM DAVIS,
JACK W. CRUMLEY,
DONALD M. LADD, JR.,

By /s/ MALCOLM DAVIS,
Attorneys for Said
Defendants. [18]

[Title of District Court and Cause.]

AFFIDAVIT OF E. B. PADRICK IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

State of Illinois,
County of Cook—ss.

E. B. Padrick, being first duly sworn deposes and says:

I am agent for various railroad companies acting under powers of attorney on file with the Interstate Commerce Commission and State Commissions and have personal knowledge of the facts herein set forth.

This affidavit is submitted in support of the motion of the defendants, Union Pacific Railroad Company, a corporation, and Chicago and North Western Railway Company, a corporation, for summary judgment herein for the purpose of showing that there is in this action no genuine issue as to any material fact and that the plaintiff is entitled to judgment as a matter of law herein in the [19] sum of Twenty-five Dollars (\$25.00) only.

As agent as aforesaid acting for various railroad companies, including Union Pacific Railroad Company and Chicago and North Western Railway Company, I hereby state that there was filed with the Interstate Commerce Commission and with the various State Commissions through which Union Pacific Railroad and Chicago and North Western

Railway operate, Western Baggage Tariff No. 25-13 issued May 12, 1948, effective June 15, 1948, which tariff set forth the rules, regulations, rates and charges applying in connection with the transportation of baggage and other articles of property over various railroads, including Union Pacific Railroad and Chicago and North Western Railway, from the effective date of June 15, 1948, to and including August 31, 1953. The said tariff was duly printed and kept open to public inspection as well as being filed as aforesaid, all in full compliance with the provisions of the Interstate Commerce Act and particularly Title 49, Section 6, Paragraph (1) of the United States Code. There were also furnished ample copies of said tariff to Chicago and North Western Railway Company for posting as required by said section. A copy of said tariff will be served upon counsel for plaintiff in the above-entitled action contemporaneously with the service upon counsel of a copy of this affidavit.

/s/ E. B. PADRICK.

Subscribed and sworn to before me this 3rd day of December, 1953.

[Seal] /s/ A. F. HUCKSOLD,

Notary Public in and for
Said County and State.

EXHIBIT B

[Title of District Court and Cause.]

AFFIDAVIT OF C. E. QUACKENBUSH IN
SUPPORT OF MOTION FOR SUMMARY
JUDGMENT

State of Illinois,
County of Cook—ss.

C. E. Quackenbush, being first duly sworn deposes and says:

I am General Passenger Agent of Chicago and North Western Railway Company and have personal knowledge of the facts herein set forth.

This affidavit is submitted in support of the motion of the defendants Union Pacific Railroad Company, a corporation, and Chicago and North Western Railway Company, a corporation, for summary judgment herein for the purpose of showing that there is in this action no genuine issue as to any material fact and that the plaintiff is entitled to judgment as a matter of law herein in the [21] sum of Twenty-five Dollars (\$25.00) only.

As General Passenger Agent of Chicago and North Western Railway Company prior to and on June 24, 1952, I caused to be complied with, on behalf of that company, all applicable requirements of the Interstate Commerce Act and regulations and orders of the Interstate Commerce Commission with respect to making available to the public, for inspection, all tariffs applicable to transportation

of passengers and baggage, including Western Baggage Tariff No. 25-13. In particular, copies of said Western Baggage Tariff No. 25-13, that tariff being the one applicable to the transportation of a dog, as baggage, in connection with the transportation of such a dog and its owner from Chicago to Los Angeles on the "City of Los Angeles," were kept available for inspection by the public in the depot of Chicago and North Western Railway Company at Chicago, Illinois, on June 24, 1952.

/s/ C. E. QUACKENBUSH.

Subscribed and sworn to before me this 15th day of December, 1953.

[Seal] /s/ P. J. SESTERHENN,
Notary Public in and for Said
County and State.

My Commission Expires May 5, 1954. [22]

EXHIBIT C

[Title of District Court and Cause.]

AFFIDAVIT OF E. R. FOSTER IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

State of Illinois,
County of Cook—ss.

E. R. Foster, being first duly sworn deposes and says:

I am employed by Chicago and North Western Railway Company as a Baggage Check Clerk in the Chicago Passenger Terminal of that company and was so employed on June 24, 1952, and have personal knowledge of the facts herein set forth.

This affidavit is submitted in support of the motion of the defendants Union Pacific Railroad Company, a corporation, and Chicago and North Western Railway Company, a corporation, for summary judgment herein for the purpose of showing that there is in this action no genuine issue as to any material fact and that the plaintiff is entitled to judgment as a matter of law herein in the [23] sum of Twenty-five Dollars (\$25.00) only.

As Baggage Check Clerk at the Chicago Passenger Terminal aforesaid on June 24, 1952, and at the hour of about 5:40 p.m. of that day, the plaintiff above-named, Bernard Mitchell, came to me and stated that he desired to check his dog through from Chicago to Los Angeles on the train known as "City of Los Angeles No. 103" commencing that evening. Said Bernard Mitchell exhibited a passenger ticket entitling him to passage on said train. In accordance with the provisions of Western Baggage Tariff No. 25-13, I asked Mr. Mitchell to make out the valuation slip required and saw him do so in his own handwriting. A photostatic copy of the said valuation slip is attached hereto, marked Exhibit A, and made a part hereof. I actually saw Mr. Bernard Mitchell write in the figure "25" in the line under the printed statement, "Is valued at not ex-

ceeding," and also saw him write out his name and address in the blank spaces farther down on the valuation slip. I then punched his ticket to indicate that baggage had been checked on the ticket and returned the ticket to him. The dog was placed in a crate in the presence of Mr. Mitchell, the crate and dog together were weighed and then placed with other baggage to be taken out and put aboard the train.

/s/ E. R. FOSTER.

Subscribed and sworn to before me this 19th day of November, 1953.

[Seal] /s/ MARY C. MARIGA,
Notary Public in and for Said
County and State.

[The valuation slip, Exhibit A, mentioned in the foregoing affidavit is identical to valuation slip attached to the answer, see page 16.] [24]

Western Baggage Tariff
No. 25-13
(Cancels No. 25-12)

* * *

Rule 6—Public Entertainment Paraphernalia
(See Note B on following page)

Transporting Public Entertainment Paraphernalia
in Regular or Special Baggage Cars for Or-
ganizations or Individuals Giving Theatrical

Performances, Concerts, Lectures or Other Public Entertainments, Indoors or Out of Doors.

* * *

(C) *Domestic and trained animals* weighing not to exceed three hundred (300) pounds each, used in producing a theatrical performance or other public entertainment, indoors or out of doors, may be checked and transported in regular baggage service or in special baggage cars at the convenience of the carrier, under the following conditions:

(1) They must be accompanied by owners or caretakers who present valid transportation and who will provide proper facilities for loading and unloading, feeding and watering, whenever necessary.

(2) They must be properly presented for shipment, which will be made at convenience of the carrier.

(3) *If crated*, charge will be based on the actual weight, with allowance shown in paragraph (D) of this rule.

(4) *If not crated*, they must either be weighed or a careful estimate made of the weight and charge based on gross weight without free allowance. Minimum charge for each uncrated animal will be three dollars (\$3.00), *except* that dogs on leashes will be handled in regular baggage service in accordance with conditions and charges prescribed in Rule 7.

(5) *Animals which may be dangerous*, inconvenient or undesirable to transport in baggage cars in regular service such as elephants, lions, leopards, tigers, etc., and those weighing more than three hundred (300) pounds, will be handled only in special cars, subject to special baggage car rules.

(6) *The foregoing covers only animals* which are used exclusively and regularly in *giving theatrical performances or other public entertainments*, indoors or out of doors, but does not include race horses, polo ponies or horses owned by individuals for private use or exhibition, or horses of Sheriff's Posses, shippers of which should be referred to the Freight Department or Express Company.

(D)

1. One hundred and fifty (150) pounds of property described in this rule, not exceeding one hundred dollars (\$100.00) in value, will be transported in regular baggage service without charge for each adult passenger and seventy-five (75) pounds, not exceeding fifty dollars (\$50.00) in value, for each child traveling on a half ticket, except that this allowance shall not be in addition to the free baggage allowance on personal baggage described in Rules 4 and 10. The liability of the carriers shall not exceed twenty-five dollars (\$25.00) in value on each piece of property described in this rule, and the total liability shall in no case exceed one hundred dollars (\$100.00) for each adult passenger and fifty dollars (\$50.00) for each child trav-

eling on a half fare ticket unless at time of checking the passenger declares a greater value and pays for same in accordance with Rule 11, paragraphs (F) and (G). [53]

* * *

Rule 7—Dogs

(See Note C on next page)

1. (A) When accompanied by a passenger presenting valid transportation, Dogs not exceeding twenty-five dollars (\$25.00) in value (see paragraph (G), and which are not intended for other persons, nor for sale, may be transported in baggage service, subject to the conditions shown in Paragraphs (B) to (J), inclusive:

(B) Each uncrated Dog must be securely muzzled and provided with a strong close-fitting collar or harness, to which must be securely fastened a chain or other strong leash.

(C) Uncrated dogs will not be checked beyond junction points where ferry or vehicle transfer is required. (See Note C on next page, applying to dogs checked via Denver and Rio Grande Western Railroad Company, Laramie, North Park & Western Railroad Company, Saratoga & Encampment Valley Railroad Company, Southern Pacific Company (Pacific Lines) or Union Pacific Railroad Company.)

(D) When shipped in a strong substantial crate, or other substantial container fitted with handles, one or more dogs may be included in one shipment.

(E) A revenue check will be attached to each uncrated Dog or to each crate containing one or more dogs.

Charges:

Uncrated Dogs: Charge for gross weight of dog at rate shown in Rule 21, Table A. When gross weight is less than 50 pounds, charge should be made on basis of 50 pounds.

Crated Dogs: Charge for gross weight of dog or dogs with crate, at rate shown in Rule 21, Table A. If gross weight is less than 25 pounds, charge should be based on basis of 25 pounds.

(F) When dogs are checked from station where an agent is on duty all charges must be prepaid.

(G) The limit of value on an uncrated Dog *will* be twenty-five dollars (\$25.00). Single shipments exceeding that value *must not* be accepted for transportation in baggage service. This does not preclude a passenger making two or more shipments, each shipment separately valued at not exceeding twenty-five dollars (\$25.00).

The limit of value on one or more Dogs, shipped in one crate, will be twenty-five dollars (\$25.00),

unless the shipper declares an increased valuation at time of checking and pays one dollar (\$1.00) for each one hundred dollars (\$100.00) or fraction thereof over the carrier's liability of twenty-five dollars (\$25.00). Where passengers make shipment of two or more crates, a separate valuation will be required on each crate. Declaration of value exceeding three hundred dollars (\$300.00) per crate will not be permitted.

(H) Dogs do not form any part of the baggage allowance, and when more than one Dog or more than one crate containing one or more Dogs, is presented by a passenger, each Dog or each crate shall be regarded as a separate shipment and separate charges collected on each, as per paragraph (E) of this rule. See paragraph (I), for exceptions. [54]

(I) Dogs used in producing a theatrical performance or other public entertainment, indoors or out of doors, will be considered as public entertainment paraphernalia, provided they are carried in strong crates or other substantial containers fitted with handles, and will be handled under the provisions of Rule 6, paragraph (C).

Note—Dogs intended for exhibition, bench shows, field trials, races, coursing matches, or any uncrated dog, will not be regarded as public entertainment paraphernalia, but will be handled in accordance with the provisions of this rule, except that dogs intended for exhibitions or bench shows

may be handled in special baggage cars in accordance with special baggage car rules.

(J) Dogs must be claimed immediately upon arrival at destination. Carriers do not assume obligation to store or care for Dogs at stations or wharves. Passengers must attend to feeding and watering Dogs en route and at stations or wharves. [55]

* * *

Baggage or Property of Excess Weight or Value Rule 11—Excess Baggage

* * *

(F) *Excess Value*—Unless a greater sum is declared by a passenger (*see Exceptions below*) and charges paid for excess value at time of delivery to carrier, the value of baggage or property belonging to, or checked for a passenger, shall be deemed and agreed to be not in excess of the amount specified in Rules 5, 6 and 10, and the carriers issuing and participating in this Tariff will not assume liability for a greater sum in case of loss or damage. See paragraph (G) for lines requiring declaration of value in writing before checking.

If passenger declares according to the form prescribed by checking carrier (*see paragraph (G)*), a greater value than specified in the rules mentioned in the preceding paragraph, there will be an *additional charge* at the rate of fifteen (15) cents for each one hundred dollars (\$100.00) or fraction

thereof, above such agreed maximum value. *Minimum* charge fifteen (15) cents.

Declaration of value exceeding maximum of twenty-five hundred dollars (\$2,500.00) will not be permitted on baggage or property owned by one passenger presented as one shipment.

A separate declaration of value must be required for each shipment on which the liability is limited to twenty-five dollars (\$25.00). (See Rules 5(B), 5(C), 6(D) and 7.) Separate declaration of valuation must also be taken when baggage is checked to two destinations on same ticket, as provided in Rule 1(D), total value declared on both lots not to exceed maximum of twenty-five hundred dollars (\$2,500.00) per passenger. For limit of maximum value, see Rule 9.

A separate declaration of value must be required for each shipment of Kit Bags (including Sea Bags, Barracks Bags, and Aviators' Kit Bags), Shoulder Packs, Trunk Lockers and Officers' Bed Rolls, where the liability is limited to one hundred dollars (\$100.00) per passenger for any one or more of these articles, unless a greater value is declared at time of delivery to carrier and charge in this rule is paid for such increased valuation. A separate declaration of valuation must also be taken when baggage is checked to two stations on the same ticket, as provided in Rule 1(D), total value declared on both lots, not to exceed maximum of twenty-five hundred dollars (\$2,500.00) per passenger. For limit of maximum value, see Rule 9.

If shipper declines to state the value of the baggage or other property on the form prescribed, it will not be accepted in **baggage service**.

Charges for excess value should be prepaid whenever possible, and are separate and distinct from the charges for excess weight.

Collections for excess value will *not* be made to any station or wharf beyond that to which the baggage is checked. [69]

* * *

(G) *Excess Value*—The shipper of baggage or other property permitted to be transported under this Tariff must, at the time of delivery to carrier, declare in writing the value thereof on form prescribed by checking carrier, as below:

Name of Carrier

Station (Date) 19....

Valuation of Baggage

The property covered by Checks numbered is valued at not exceeding \$..... and in case of loss or damage to such property, claim will not be made for a greater amount.

Number of Passengers.....

Number of Tickets.....

(Signed)

Shipper:

Address

Baggage of excess value will be charged for subject to Tariff regulations.

If shipper declines to state the value of the baggage or other property on the form prescribed, shipment will not be accepted in baggage service.

[Endorsed]: Filed December 28, 1953. [70]

[Title of District Court and Cause.]

AFFIDAVIT OF BERNARD MITCHELL IN
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT

State of California,
County of Orange—ss.

Bernard Mitchell, being first duly sworn, deposes and says: That he is the Plaintiff in the above-entitled action, and was the owner, at all times mentioned herein, and in the Complaint on file herein, of a certain dog named "Pudsy." That said dog named "Pudsy" was a trained dog, used exclusively and regularly in the giving of theatrical performances, and in public entertainment, for both educational and entertainment purposes. That the Plaintiff was a resident of Northern Ireland, and a citizen of Great Britain; that for approximately two (2) years the Plaintiff had been regularly using said dog for the exclusive purpose of giving theatrical performances and [85] entertainments of both strictly entertainment and educational value in Northern Ireland. That said dog, "Pudsy," was called the "Wonder Dog of Europe" by the citizens of Northern Ireland, and was so known and stated

to be the "Wonder Dog of Europe" in the leading papers of Ireland and of England. That great things were predicted by way of the success of the wonder dog, "Pudsy," in the movies and in the entertainment fields in the United States. For this reason, and for the sole purpose of exhibiting the dog, "Pudsy," in the giving of theatrical and other public entertainments, the said Plaintiff, Bernard Mitchell, left his home in Ireland, and was in the process of bringing the dog, "Pudsy," to the State of California for the purpose of entering said dog in the theatrical performances and other public entertainments of the movies, television, and other forms of public entertainment in the United States and in California.

That said dog was of the value, to the Plaintiff herein, in the sum of One Hundred Thousand Dollars (\$100,000.00). That the Plaintiff herein personally accompanied said dog, "Pudsy," on the boat from Ireland; personally watering, airing, feeding, caring for, exercising and training said dog at all times while on the ship to America. That from New York to Chicago, said Plaintiff was personally permitted to care for his dog, feed, water, and exercising the same at all times during said trip.

That the Plaintiff herein, being a citizen of Great Britain, and a resident of Ireland, was unfamiliar with the rules and regulations and customs, and manner of doing business, in the United States. That the Plaintiff herein was, at all times herein, amazed and bewildered by the difference in the ac-

tions, life, and manner of activity [86] in the United States. That said Plaintiff relied solely upon the advice and instructions of all persons he contacted in charge of transportation and other facilities in aiding him in bringing himself and his dog, "Pudsy," to Los Angeles, California.

That said Plaintiff herein was wholly unfamiliar with any rules or regulations relative to the transfer and carriage of himself and his dog, "Pudsy," while in the United States. That at all times the Plaintiff herein acted upon the assumption and advice given to him by persons connected with the railroads and other methods of transportation used in conveying him to California. That at all times mentioned herein, Plaintiff, Bernard Mitchell, was of the belief and understanding that the proper care, feeding, handling, and control of said dog, "Pudsy," would be handled by the railroad so conveying his dog, and that he was advised at all times, by the Defendants herein and their agents, that the dog, "Pudsy," would be given the proper care, feeding and watering, and that at all times mentioned herein, an agent would be in charge, and actually be in, the baggage car wherein said dog, "Pudsy," was to travel. And that, further, the Plaintiff herein would have access to said baggage car, and that he would be able to visit his dog at any time he desired. That said Plaintiff, Bernard Mitchell, is an immigrant to the United States for the purpose of residing in the United States, and of showing and using his dog for the purpose of theatrical performances and public entertainment;

and was never advised by the Defendants herein or their agents that he should make a valuation of said dog, and that the said Plaintiff herein was never advised that unless he paid an additional amount for additional valuation for the full value of said dog, or any other [87] value that he would be limited to the recovery of Twenty-five Dollars (\$25.00), or limited to any other recovery for the loss of his said dog. That the Plaintiff herein was at no time advised that he could make a choice in placing a valuation. And that at no time herein was the Plaintiff advised, nor did he know, that he had a choice to place any valuation whatsoever upon his dog, "Pudsy," by the Defendants herein.

That said Plaintiff, Bernard Mitchell, has read the affidavit of E. B. Padrick, in support of the motion for summary judgment. That said Bernard Mitchell does not know said E. B. Padrick, and has no personal knowledge whatsoever as to the truth or falsity of the facts set forth in said affidavit. That the Plaintiff herein has, at all times mentioned herein, had no knowledge of a document called "The Western Baggage Tariff Number 25-13," issued May 12, 1948, effective June 15, 1948, as set forth in said affidavit, or in any manner whatsoever. That the Plaintiff herein has, at no time until seeing the said document called the "Western Baggage Tariff Number 25-13" attached to the Motion for Summary Judgment, had any knowledge that such document ever existed, and that said Plaintiff at no time has seen said tariff, and at all times mentioned in the Complaint had absolutely no knowledge whatso-

ever that such a document, containing any of the provisions therein, existed. That the Plaintiff herein was never advised by any agents of the Defendants herein, or by anyone at all, that such a document existed, and that said Plaintiff has never seen said document, and does know, even to this date, that the same is open to public inspection; has no knowledge where to find the same or to see the same, even at this date. That the Plaintiff has not seen, at [88] all times mentioned herein, any copy of said tariff posted anywhere, at any time.

That the said Plaintiff, Bernard Mitchell, has read the affidavit of C. E. Quackenbush. That the Plaintiff herein does not know said affiant, Mr. Quackenbush, or his position with the railway companies. That the Plaintiff herein at no time, while in Chicago or at any other place whatsoever or at all, was advised by any agent of the Chicago and Northwestern Railway Company, or any other person that there was such a thing as a baggage tariff number 25-13, and that the Plaintiff herein at no time was told that there was such a Western Baggage Tariff Number 25-13 open to inspection in the depot of the Chicago and Northwestern Railway Company, at Chicago, Illinois, on or about June 24, 1952, or at any other time whatsoever or at all; and there was barely time for the Plaintiff to transfer from his train going from New York to Chicago, to get on a train from Chicago going to Los Angeles, being the train "The City of Los Angeles." That the time was extremely short, and in a matter of minutes after the Defendant arrived at the train

station of the Defendants in Chicago, in which it was necessary for the Plaintiff to catch the train for Los Angeles. That it was not practical for the Plaintiff to look anywhere in said train station other than purchase tickets, and try and find the train that he was to get on. That the Plaintiff does not know to this date where in said train station, if at all, the said "Western Baggage Tariff Number 25-13" was posted. That the depot from which the Plaintiff left Chicago to come to Los Angeles was a powerful big station.

That the Plaintiff, Bernard Mitchell, has [89] read the affidavit of E. R. Foster; and that the Plaintiff does not personally know an E. R. Foster; but that the Plaintiff has read the affidavit of E. R. Foster, and specifically denies that on June 24, 1952, or at any other time whatsoever, at or about the hour of 5:40 p.m. of that day, or at any hour or time whatsoever, that the Plaintiff above named, Bernard Mitchell, came to E. R. Foster and stated that he, the said Bernard Mitchell, desired to check his dog through from Chicago to Los Angeles on the train known as the "City of Los Angeles," number 103, commencing that evening. Said Bernard Mitchell further specifically denies that he exhibited any passenger ticket whatsoever, entitling him to passage on said train. That the said Bernard Mitchell specifically denies that, in accordance with the provisions of the "Western Baggage Tariff Number 25-13," or any other provision of any other document or paper whatsoever or at all, that the said E. R. Foster asked the Plaintiff, Bernard

Mitchell, to make out the valuation slip required and saw him do so in his own handwriting. That the Plaintiff herein, Bernard Mitchell, has looked at a certain piece of paper; a photostat of a piece of paper, marked "Exhibit A"; to the affidavit of E. R. Foster, and said Plaintiff, Bernard Mitchell, specifically denies that he ever made or signed such a piece of paper, or printed statement. That said Bernard Mitchell specifically denies that he, at any time, wrote in the figure "25," in the line under the Plaintiff's statement, "is valued at not exceeding," as set forth in the affidavit of E. R. Foster. That said Bernard Mitchell specifically denies, and states that he denies, that he ever wrote out his name and address in the blank spaces farther down on the valuation slip, as set forth in "Exhibit A." That the said Bernard Mitchell further denies that the dog [90] was placed in a crate in the presence of the Plaintiff, and specifically denies that the crate and dog together were weighed and then placed with other baggage to be taken out and put aboard the train. That said Bernard Mitchell further denies specifically that E. R. Foster punched his ticket to indicate the baggage had been checked, and returned the ticket to him.

Said Plaintiff, Bernard Mitchell, further alleges, and states by affidavit herein, that he at no time executed or filled in the piece of paper marked "Exhibit A," attached to the affidavit of E. R. Foster. The said Bernard Mitchell further states that he at no time stated anything to the said E. R.

Foster, or any other baggage check clerk, as set forth in the affidavit of E. R. Foster, on file herein.

That the said dog, "Pudsy," was not carried as ordinary baggage under Plaintiff's ticket, but a separate charge was paid to the Chicago Northwestern System for the carriage of said dog named "Pudsy." That said dog, "Pudsy," was not baggage carried on a passenger train as free baggage, checked through on a passenger fare. That a fare of Eight Dollars and Thirty-three Cents (\$8.33), was paid for the transportation of the dog, "Pudsy." That said dog, "Pudsy," was delivered to the Defendants in a strong crate fitted with a handle.

That the above affidavit has been read by the Plaintiff herein, Bernard Mitchell, and, under his oath, he hereby states that the same is true, to his own knowledge.

Dated: This 5th day of March, 1954.

/s/ BERNARD MITCHELL. [91]

The foregoing affidavit, consisting of eight (8) pages, including this page.

Subscribed and Sworn to this 5th day of March, 1954, before me, a Notary Public in and for the County of Orange, State of California.

[Seal] /s/ GEORGE H. CHULA.

[Endorsed]: Filed March 8, 1954. [92]

Affidavit of Service by Mail attached.

[Title of District Court and Cause.]

FINDINGS OF FACT AND CONCLUSIONS OF LAW

The motion of defendants, Union Pacific Railroad Co., a Corporation, and Chicago Northwestern Railroad Co., a Corporation, for summary judgment herein in favor of the plaintiff and against defendant Chicago Northwestern Railway Co., a Corporation, in the sum of Twenty-five Dollars (\$25.00) only, came on regularly for hearing before the above-entitled Court in the courtroom of the Honorable Ernest A. Tolin, United States District Judge, on December 12, 1955. Plaintiff appeared by his attorneys, Monroe, Chula and Lines, by George H. Chula, Esq. The Court having considered the pleadings and affidavits on file and the depositions of Bernard Mitchell and Mrs. Bernard Mitchell and the evidence, and being fully [94] advised in the premises and finding that there is no genuine issue as to any material fact, makes the following findings of fact:

Findings of Fact

I.

That on June 24, 1952, at about 5:40 p.m., the plaintiff presented the dog "Pudsy" to Mr. E. R. Foster, Baggage Check Clerk employed by defendant Chicago North Western Railway Co., in the depot of said defendant at Chicago, Illinois, for checking as baggage to Los Angeles, California, on

the train "City of Los Angeles"; that plaintiff intended to travel on the same train and exhibited his ticket entitling him to do so to Mr. Foster; that Mr. Foster handed a "Valuation of Baggage" slip to plaintiff's agent, Mrs. Bernard Mitchell, who then and there, under authority of plaintiff, filled out said "Valuation of Baggage" slip declaring that the dog was worth Twenty-five Dollars (\$25.00), and that in case of loss or damage to the dog, claim would not be made for a greater amount; that thereupon the dog was placed in a carrying case or crate and in due course was placed in the baggage car of said train; that one counterpart of Baggage Check No. 5114 was attached to said carrying case, and one counterpart of said baggage check was delivered to plaintiff; that when plaintiff attempted to feed and water the dog at Clinton, Iowa, during the late evening of June 24, 1952, he found that said dog was dead; that the death of said dog was caused by lack of ventilation in the baggage car, due to the negligence of the defendant Chicago North Western Railway Co., on the lines of which railroad all transportation to that point had taken place; that the defendant Union Pacific Railroad Co. was not connected in any way with the transportation or handling of [95] the dog.

II.

That prior to and on June 24, 1952, defendant Chicago North Western Railway Company had on file with the Interstate Commerce Commission and had printed and kept open to public inspection as

required by all applicable requirements of the Interstate Commerce Act and regulations and orders of the Interstate Commerce Commission, Western Baggage Tariff No. 25-13, which was the tariff applicable to the transportation of said dog; that said tariff provided that the limit of value on one dog, shipped in one crate, was Twenty-five Dollars (\$25.00), in the absence of a declaration of an increased valuation and payment of a higher rate; that plaintiff did not declare any increased valuation of said dog, but, on the contrary, as set forth above, declared the dog to be of the value of Twenty-five Dollars (\$25.00).

III.

That it was the intention of plaintiff to, and he did, represent to defendants that said dog "Pudsy" did not exceed Twenty-five Dollars (\$25.00) in value; and that said representation was made with the purpose, intent and result that the defendant Chicago Northwestern Railway Co. believe and accept said valuation of said dog "Pudsy" to be not to exceed Twenty-five Dollars (\$25.00).

From the foregoing Findings of Fact the Court makes the following Conclusions of Law:

That plaintiff is estopped to assert against defendants that said dog "Pudsy" had a value in excess of Twenty-five Dollars (\$25.00);

That plaintiff is entitled to judgment against [96] the defendant Chicago North Western Railway Co.,

a Corporation, in the sum of Twenty-five Dollars (\$25.00), together with his costs of suit incurred herein taxed at \$.....

Dated: This 16th day of December, 1955.

/s/ ERNEST A. TOLIN,

United States District Judge.

[Endorsed]: Filed December 16, 1955. [97]

In the District Court of the United States, Southern District of California, Central Division

No. 15634-T

BERNARD MITCHELL,

Plaintiff,

vs.

UNION PACIFIC RAILROAD CO., a Corporation; CHICAGO NORTH WESTERN RAILROAD CO., a Corporation, et al.,

Defendants.

SUMMARY JUDGMENT

The motion of defendants Union Pacific Railroad Company, a corporation, and Chicago and North Western Railway Company, a corporation, for summary judgment herein in favor of the plaintiff and against defendant Chicago and North Western Railway Company, a corporation, in the sum

of Twenty-five dollars (\$25.00) only, came on regularly for hearing before the above-entitled court in the courtroom of the Honorable Ernest A. Tolin, District Judge, on December 12, 1955. Plaintiff appeared by his attorney, George H. Chula, Esq., and said defendants appeared by their attorney Malcolm Davis, Esq. The court having considered the pleadings, affidavits and depositions on file and the concessions and stipulations of counsel,

Now, Therefore, It Is Adjudged and Decreed that the plaintiff have judgment against the defendant, Chicago and North [98] Western Railway Company, a corporation, in the sum of Twenty-five Dollars (\$25.00), together with his costs of suit incurred herein taxed at \$.....

Dated: December 16, 1955.

/s/ ERNEST A. TOLIN,
District Judge.

Affidavit of Service by Mail attached.

[Endorsed]: Filed December 16, 1955.

Judgment docketed and entered December 19, 1955.

[Endorsed]: Filed December 28, 1953. [99]

[Title of District Court and Cause.]

NOTICE OF APPEAL TO THE UNITED
STATES COURT OF APPEALS FOR THE
NINTH CIRCUIT

To the Union Pacific Railroad Company and to the
Chicago North Western Railroad Company, and
to E. E. Bennett, Edward C. Renwick, Mal-
colm Davis, Jack W. Crumley, and Donald M.
Ladd, Jr., 422 West Sixth Street, Los Angeles
14, California, Attorneys for the Defendants:

Notice Is Hereby Given that Bernard Mitchell,
the Plaintiff in the above-entitled action, hereby
appeals to the United States Court of Appeals for
the Ninth Circuit from the Summary Judgment
entered in this action on the 19th day of December,
1955.

MONROE & CHULA,

By /s/ GEORGE H. CHULA,

Attorneys for the Appellant,
Bernard Mitchell.

Affidavit of Service by Mail attached.

[Endorsed]: Filed January 18, 1956. [101]

[Title of District Court and Cause.]

MOTION FOR EXTENSION OF TIME
WITHIN WHICH TO FILE RECORD ON
APPEAL AND DOCKET APPEAL

Comes Now the plaintiff in the above-entitled cause and moves the court for an order extending the time within which the plaintiff shall file the record and docket the appeal upon his Notice of Appeal, filed January 18, 1956, for the following reasons:

Appellant was unable to make arrangements for and file his costs bond on appeal until February 3rd;

The Reporter's Transcript of Proceedings on December 12, 1955, a copy of which, under Rule 75 of the Federal Rules of Civil Procedure, must be filed with the designation of the contents of record on appeal, was received from the court reporter last week and since receipt of the transcript counsel has been unable to come to Los Angeles to examine the files for the purpose of preparing the Designation of Contents of Record on Appeal but will do so within the next day or so;

Under the Federal Rules of Civil Procedure the appellee has ten days within which to serve and file a counter-designation of any [106] additional matter to be contained in the transcript of record and the Clerk of this court will require some time after all the designations are on file within which

to prepare the transcript and transmit it to the Court of Appeals in San Francisco;

It will be impossible to comply with all of the rules and have the appeal docketed by February 27th, the last day now fixed for filing the record and docketing the appeal;

Wherefore, Plaintiff-Appellant moves the Court for an order extending the time to file the record and docket the appeal for an additional twenty days from and after February 27, 1956, to wit: March 19, 1956.

MONROE and CHULA,

By /s/ GEORGE H. CHULA,

Attorneys for Plaintiff-
Appellant.

ORDER

No Cause Appearing From the Foregoing Motion, but as an Act of Courtesy, It Is Hereby Ordered that the time for filing the record and docketing the appeal in the above-entitled cause be, and it hereby is, extended to and including March 5, 1956.

/s/ ERNEST A. TOLIN,

Judge, United States District
Court.

[Endorsed]: Filed February 24, 1956. [107]

In the District Court of the United States, Southern
District of California, Central Division

No. 15634-T

BERNARD MITCHELL,

Plaintiff,

vs.

UNION PACIFIC RAILROAD COMPANY, a
Corporation; CHICAGO NORTH WESTERN
RAILROAD COMPANY, a Corporation, et al.,

Defendants.

DEPOSITION OF BERNARD MITCHELL

the plaintiff herein, taken on behalf of the defend-
ants, at 2 p.m., Tuesday, June 29, 1954, at 422
West Sixth Street, Los Angeles 14, California, be-
fore Edward A. Oreb, a Notary Public within and
for the County of Los Angeles and State of Califor-
nia, pursuant to the annexed stipulation.

Appearances of Counsel

For Plaintiff:

MONROE & CHULA, By
GEORGE H. CHULA, ESQ.

For Defendants:

E. E. BENNETT, ESQ.,
EDWARD C. RENWICK, ESQ.
MALCOLM DAVIS, ESQ.,
JACK W. CRUMLEY, ESQ.,
DONALD M. LADD, JR., ESQ. By
MALCOLM DAVIS, ESQ.

Mr. Chula: One thing that I want to point out, Mr. Davis, before we start, and this might save some time, there is a question here on Paragraph 8, and I have alleged in drawing up the Complaint that the plaintiff has gone and filed for more money, and that through use of the dog has received large amounts of money and publicity and so on. I want to point out in speaking about the money part for this man in Ireland, which later will be brought out, that actually he didn't receive money himself. He donated it back there. He refused the taking of the money that would be offered to him and donated the donations himself, and that is where I had some confusion in drawing it up. I think it wouldn't be fair to them, alleging one thing and another. I thought that should be in the record and we can clarify that, if necessary.

BERNARD MITCHELL

the plaintiff herein, having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Davis:

Q. Now, we are going to take your deposition, and by that is meant that although we are taking it informally in my office, that nevertheless it has just the same effect [2*] as if we were in the courtroom. A. Yes.

Q. Now, everything we say will be taken down by the Reporter and reduced to typewritten form,

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Bernard Mitchell.)

and in that form you will have the opportunity to read it over and at that time you may make corrections in the deposition to make it speak the truth. Then after you have done that you will sign the deposition as being your testimony in the action.

Now, if you make corrections in the deposition, I have the right to ask you to make explanations as to why you made them. So when you make corrections, please have in mind that you may have to explain that fact later on. Do you understand this thoroughly? A. Yes.

Q. Now, as I understand it, you are the plaintiff in this action of Bernard Mitchell versus the Union Pacific Railroad Company, a corporation, and Chicago Northwestern Railroad Company, a corporation, et al.? A. Yes, sir.

Q. And that is on account of the death of the dog Pudsy? A. Yes, sir.

Q. Now, are you a citizen of Ireland?

A. Yes, I am.

Q. But you are now a resident in the State of California? [3] A. That is right. Yes.

Q. Where do you reside at the present time?

A. At the present time I am right now at Euclid Avenue.

Q. What number?

A. 12572 Euclid Avenue.

Q. What town?

A. Garden Grove, California.

Q. Are you renting that place?

A. Yes, I am renting at that place, yes.

(Deposition of Bernard Mitchell.)

Q. Now, I take it you were born in Ireland?

A. Yes.

Q. Where did you live for some considerable period of time before you came to the United States?

A. I lived at 23 Edwards Street, Lurgan County, Armagh, Ireland. That is Northern Ireland.

Q. Was that your birthplace? Did you live there since your birth?

A. I wasn't born there, you see.

Q. For how long did you live there?

A. I lived there from—how long? We was seven years there, roughly.

Q. What was your occupation there?

A. I was a sack and bag merchant.

Q. Sack and bag merchant?

A. Yes. [4]

Q. What do you mean by that?

A. Well, I bought sacks, empty sacks and sold them, you see, and collected sacks around the country from the farmers. You would call them jute sacks.

Q. Some time before you came to the United States, you got this dog Pudsy?

A. Yes.

Q. That was a gift from a friend?

A. Yes, that is right?

Q. Now, who was the friend?

A. Well, the friend's name—I think the friend—the people that gave it to me have left us now.

(Deposition of Bernard Mitchell.)

They are dead, of course. I just can't recall the name right now.

Q. You say they are dead?

A. Yes, I think they are. I don't think they are living.

Q. Well, they weren't very good friends, I take it, then?

A. What do you mean by good friends?

Q. Well, a friend whose name you would remember very easily now.

A. Oh, well, no, they wouldn't be blood relations, if that is what you mean. Just an ordinary friend to speak to or to talk to, that kind of friend.

Q. When did you get Pudsy?

A. Well, about 1947, I think, late fall. [5]

Q. Now, as I understand it, you had had no training in the training of dogs before that, had you?

A. Well, at my place, you see, we always kept animals. You see, we are reared up with them, donkeys, ponies. We kept cattle, too. Cats and dogs and we kept all that. I was reared up with them. My experience with training dogs, this was my first dog that I had got for my own, you see.

Q. Well, had you trained any other dogs before that?

A. No, not for actual training purposes.

Q. Well, as I understand it from your answers to these interrogatories, nobody had ever taught you how to train a dog, had they? You had no education along that line, had you? A. No.

(Deposition of Bernard Mitchell.)

Q. Well, then when you got Pudsy, just tell us what you did about training him.

A. Well, you want to go into detail?

Q. Well, a little bit. Let us see how far we get.

A. Well, the first thing I brought the dog home, you see, a little pup. I came home with it. When I came to my home, there was a clergyman present in the house. He had been visiting us. He was just from the missions from Africa. He was out on the missions and knew my wife here. I came in with the dog. He says to me, "What is that you have got?" I says, "Father, that is a little pup. A little [6] dog." He says, "Bernie, have you got a name for it? What do you call it?"

"Well," I says, "got no name yet. I just got it. Just bringing it in."

He says, "Well, I will give it a name."

I says, "Father, whatever name you give that dog, I am going to call it. I don't care what the name is. Once you mention it, I am going to call that dog that name."

Well, he began to think it over.

Q. Well, we are getting into too much detail.

A. Well, that is how it got its name. It is a name. I am only going to tell you how he got his name.

Q. Well, O.K.

Mr. Chula: He wants to know how you trained it and what you did.

The Witness: I will come to that after getting over the dog. I want to get first how it got its

(Deposition of Bernard Mitchell.)

name. There was hundreds of people who asked me how this dog got this name.

Q. (By Mr. Davis): I am sorry I interrupted. Go back to where you were.

A. He says, "I will give it a name." He says, "Call it Pudsy." I says, "All right, Father, I will call it Pudsy." That is a character in the Far East. That is how the dog got its name. So we were talking some more, just at tea. [7]

Q. What kind of a dog was it?

A. It was a fox terrier.

Q. What was its color?

A. Black and white.

Q. What portions were white and what portions were black, do you remember?

A. Well, a black spot on his back; he had a black head. You see, he was—he had two little dots on his head here, as the photograph—I will show it to you.

Q. All right. Tell us how you went about training the dog.

A. Well, here is how I went about it. I was always ambitious for the training of an animal and doing something with an animal on my own, you see.

Q. By the way, how old was the dog when you got it? A. It was about six weeks old.

Q. Well, now, just tell us what you did; never mind your ambitions. Tell us what you did.

A. The first thing I looked at the dog and examined him, you see, and let him set down for a while. I looked at his head and I said, "That boy

(Deposition of Bernard Mitchell.)

has intelligence in there. All it wants to need is to bring it out." He had a wise head, you see. He began to know how to do things in no time. I told him to go out and he went out. I told him anything, you see. If he had messed any place, I said "Don't do that any more." And he wouldn't have done it. I began to [8] see this was intelligence in this dog. So I got down into the training. I said, "Well, I am going to bring it out of him. It is there. All it needs is to come out."

So nobody in the house, only myself, you see, just the two of us, whenever I was there on my own, I closed all the doors and let that dog into the kitchen, you see, and I began to teach him. I was teaching him first how to sit up, how to beg and teaching him how to lie down. I taught him to sit up and say his prayers with his paws up like that (indicating), you see. Well, I just started with that, you see. Then as he got on, you see, I didn't give too much at the beginning. I let him settle down. When he got that trick well off, then I trained him to do another one. As he was growing, he was getting wiser. And then I learned him more tricks. I learned him how to close the door. I had to come through the door and I said, "Pudsy, go and close that door." Pudsy went over and closed the door. And when he came back, of course, I patted him and a little tidbit, you see.

I was sitting and smoking a cigarette; purposely I put it down on the floor, and the dog was sitting there. I pay no attention to him. I looks at the dog;

(Deposition of Bernard Mitchell.)

I says, "Pudsy, are you going to let this house burn down? Put that cigarette out." So he gets up and puts the cigarette out. He shakes it with his mouth and tromps on it with his paws, and I said, "That is a good boy." Another pat and a little [9] sweet tidbit. He never did anything that I didn't repay him. That is the way I trained him at my house.

I would ask him how would he like to come for a walk. I says, "Let's go for a walk. Where is your strap? Let us get your strap and let us go." He would get the strap.

Then I learned him, you see, to go over my back at home, you see, and through me arms and to sit up and do anything at all. I learned him how to count the spots on the cards. In a five-spot or ten spots, I would say, "Tell me how many spots on there. If there were ten spots, he gave ten barks. Five spots, five barks.

I learned him how to do sums. I said to him—I learned him to count first. Then I learned him to do sums. I asked him sums such as, "How much is six and two?" I would ask him that and he would give eight barks. I said, "Two and two?" And four barks.

Well, I give him a little tidbit. And then after that I got him well onto that and I began to give him dividing sums. For instance, four into sixteen and two into eight and four into twenty and three into twenty-one, and I would test him. I said, "Pudsy, tell me how many fours into twenty?" Five barks. "Well," I said, "that is good."

(Deposition of Bernard Mitchell.)

I said, "Well, I will try better still. I am going to learn him now—" I learned him how to subtract away; for instance, three from eight, four from seven, three from eleven. I would say, "Three from eight"; five barks. Well, [10] then I would say, "Three from six"; three barks.

Of course, I always gave him something.

Well, then, a reporter came down from the local newspaper, and he heard about the dog, so I put him through all that for the reporter.

Q. When was that? A. That was in——

Q. Is that when you——

A. Yes. You can see it in that post, that is when the reporter came down.

Q. Now, I am showing you a clipping that was attached to your interrogatories, and that shows a clipping from the Lurgan and Portasdown Examiner dated April 28, 1951; is that right?

A. Yes, that is right.

Q. Now, up to that time had you exhibited the dog in public at all?

A. Yes, I had. I had before he came down. Yes, I had done a few shows. Yes, I had done a show in Rith Friland. I did a show there with him, and I did a show in the next place to that in Gregory.

Q. Now, when did you give those shows?

A. Well, that was just—that was before this man here came down.

Q. How much before?

A. I would say about—I would think three or four [11] months before that.

(Deposition of Bernard Mitchell.)

Q. Well, when you say you gave a show, where did you give those shows?

A. In the Parish Hall—in a hall.

Q. Parish hall? A. Yes.

Q. Was there an audience present?

A. Oh, yes.

Q. How many people?

A. It was all full, packed.

Q. About how many?

A. Oh, let's see. I would say there was between three and four hundred that was there.

Q. How much did you charge for admission?

A. Oh, yes, the people who had the hall charged admission.

Q. How much?

A. Admission, I think it was two and six to get in.

Q. How much was that in our money?

A. That wouldn't be very much in your money. That would be—I don't know how you figure that in your money.

Q. Two and six is two shillings and six pence?

A. That is right.

Q. We will say about 12 cents or something like that? A. Yes.

Q. 12 and half cents? [12] A. Yes.

Q. Then six pence is half a shilling?

A. Half a shilling, that is right.

Q. So it would be about 32 cents altogether, then?

(Deposition of Bernard Mitchell.)

A. I suppose you would kind of call it that.

Q. Well, what happened to the money?

A. Well, what happened to the money there, the people in charge of the hall run the show, you see. They started to give me my money and I said to the man to give it to charity.

Q. Well, did all the admissions go to the church?

A. Yes.

Q. You didn't get any?

A. I was asked for my fees. I could have charged them, but, you see, I put my fee into the charity.

Q. Did you actually charge a fee?

A. Yes, I charged.

Q. How much? A. It was accordingly.

Q. Well, in those two places, what did you charge?

A. I left that to their own decision, their own decency, you see. They always treated me—gave me more money than I charged.

Q. Did they give you any money?

A. Well, they offered me, you see.

Q. What did they offer you? [13]

A. Anything I said, the price.

Q. Well, what did you say?

A. I said, "Whatever is fair. I don't want to go too hard with you."

Q. What amount of money was agreed on?

A. Well, you see, it was just whatever I would ask.

Q. Well, what did you ask for on those two

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shows that you gave before you saw the reporter?
What figure was it?

A. Well, it was a little figure because I left it to them, whatever they thought it was worth.

Q. Well, didn't they ever tell you what they thought it was worth?

A. I said, "Whatever you think I am entitled to for the show."

Q. What did they tell you?

A. Well, that is a hard thing to remember right now. They didn't tell me. It was a charity affair and social affair. I never cared much about prices.

Q. Well, you never came to any agreement as to what your fee might be; is that it?

A. No, we never came up to anything like that.

Q. Well, anyway, you wouldn't have taken the money; you would have given it to the church and you just told them to keep it? Is that right?

A. Yes, that is right. [14]

Q. Well, after the reporter came down to see you on this date of April 28, 1951, did you show the dog some more?

A. After the reporter, yes.

Q. Where did you show him and about how many times?

A. I showed him in a place called Derry Macash Hall.

Q. Where was that?

A. Outside Lougan, about three miles outside Lougan.

Q. When was that?

(Deposition of Bernard Mitchell.)

A. Well, you see, that was sometime after that reporter came down. I don't know exactly the date.

Q. Do you about the date?

A. Let me see now. It was about a month or so after that.

Q. All right. Did you show him again?

A. Yes, I showed him again at Newry, in the town hall of Newry. I showed him there.

Q. When was that?

A. That was after this other show here at Derry Macash Hall.

Q. Well, about how long?

A. This isn't exact. It is pretty hard to give you exact details. This is just roughly.

Q. Well, that is all I am asking you for is your best recollection.

A. Well, a couple of months after that. It was about two months after that. [15]

Q. Did you show him any more? A. Yes.

Q. Just tell me about it, will you?

A. I brought him from Newry and I did a show with him in my own home town, Forrester's Hall. I done a show with him there, and then I done a show in Lurgan, Lurgan's town hall. I done a show in the Convent of Mercy, Lougan, for the children on the playground. I done a show then in Lougan in St. Joseph's Hall. Then a lot of people came into the home to see him, you see, in between these things. They heard about him and came to see the dog personally. They came from all around the country to see him.

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Q. Well, do you remember any more shows that you gave?

A. Yes, I done a show in the Textile Hall and we did a show at the Union Hall in Lougan. I done a show there. I done a show for the Sisters of Mercy in Lougan, too. The nuns, I done a show for them. That is as far as I can remember right now, you see.

Q. Yes. Well, if you remember any more, you can put those in the deposition when you sign it.

A. Yes.

Q. Did you get any money yourself from any of those shows?

A. Well, the money that had been given to me, I donated to charity.

Q. All of these places were in charitable institutions, [16] were they not? A. Yes.

Q. Churches and the Union Hall and so on?

A. Yes.

Q. So you would show the dog in order to raise money for the organization that owned the hall; is that it? A. Yes, that is it.

Q. I see. Well, was there any fee ever fixed for your services in showing the dog?

A. No, I can't recall of any, you know.

Q. Well, now, when did you start for the United States?

A. Well, I started in June. I left my home town in Ireland about—I landed in the United States on the 13th of June, in New York.

Q. When was that?

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A. 1952. That was two years ago.

Q. Now, how did you happen to come to the United States?

A. I came to show my dog on television and make pictures with him in Hollywood and also to display him to all the children of the United States, which I displayed to all the children in Ireland, of the kindness that can be done.

Q. Did you have any purpose in coming, too?

A. No, that was my sole purpose. [17]

Q. What was it that made you believe that you could get him in television?

A. Well, we had no television in Ireland, and I knew this was the country for television and also the country for anything like that part of it.

Q. Well, did you have any contract with anybody?

A. Well, I was to meet people, you see, when I would arrive.

Q. When you were to arrive where?

A. In Los Angeles, with the dog.

Q. Whom were you to meet?

A. Well, my wife knew some friends in Hollywood. She knew Mrs.—Bob Hope's wife and there was a few more friends. Well, I was in with contacts, too.

Q. Were you to make those contacts after you got here or did you have correspondence before you came over?

A. Well, I would have to bring the dog over first. I would have to arrive with the dog first. I

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would have to let them see the dog and prove to them that he was the dog.

Q. Let's see. You lived in North Ireland, didn't you? A. Yes.

Q. And you left from Cobb, you say?

A. Yes.

Q. Where is that located? [18]

A. The southern part of Ireland.

Q. How did you get there? A. By train.

Q. How did you transport the dog on the train?

A. I was given permission to have the dog beside me on the train from Belfast to Cobb.

Q. That is right in the passenger compartment?

A. Yes, right there beside me. Right beside me.

Q. You did take him that way?

A. Yes, I did the whole way.

Q. Did you have him on a leash?

A. Yes, on a leash.

Q. But not in a crate? A. Not in a crate.

Q. You and your wife and the dog were the only ones in the party, I take it; is that right?

A. Yes, that is right.

Q. All right. You got to Cobb and you took the Mauretania to New York; is that right?

A. Yes, that is right.

Q. Now, how did the dog get around, then, on board ship?

A. Well, before I took him on board I was consulted by, I think, one of the Cork newspaper representatives, who was right there looking for me. He seen me coming up.

(Deposition of Bernard Mitchell.)

Q. What representative? [19]

A. One of the Cork papers.

Q. Cork newspapers?

A. That is in Cork. That is in the City of Cork. He asked me, "Is this the famous dog?" I says, "Yes, that is him." He says, "You are for the United States?" I said, "Yes, I am going to the United States."

He says, "Is he going on television?"

I says, "Yes, he is going to make pictures and be on television."

He says, "Aren't you the trainer and owner?"

I says, "Yes, I am the sole trainer and owner."

He said, "Well, don't mind me stopping you."

I says, "It is all right."

He says, "I am the reporter for the newspapers and I have to put this in the paper." He wished me luck and I went on through to the boat.

When the boat was leaving, there was some friends that took me down to the boat at Cork, you see, and I was on the boat and it was leaving. So I told the dog to sit up on the bench on the boat and I said to the dog, "Pudsy, give them the last farewell barks before you leave the Old Country." So Pudsy barks. He barks three times, one, two and three, and I shook my hand and we went on out. I landed with the *Mauretania*. I brought my dog up to the people in charge. I don't know what they call them, in charge of the boat. I handed me dog over. I said, "Can I be able [20] to see him and look after my dog and give him care and give

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him anything he wants and will I be able to see him any time?"

I was told—I got permission at any time of the day or night to go in and to see that dog. I could have went in any time on that ship while the boat was on the ocean and bring the dog out onto the deck and give it exercise and bring it in again.

Q. Where was the dog to stay?

A. A special place they have with kennels so they can keep animals. The butcher, he was called the butcher, was in charge of them. They were on the lower deck, you see, apart from the passengers' side, where they kept animals with other dogs. The butcher was very good to him. He got right on friendly with the butcher and became great friends. He says, "That is a good dog. Bring him right out any time." So we—well, word got around the boat that he was a trick dog. They had a concert on the boat, a children's concert on the boat. The purser came along to me and he approached me and he says, "I want you to bring your dog over and give the children a concert." He says, "I am having a concert with the third class up to the first class compartments." He said, "Will you come up with your dog?" I said, "Sure. I will be glad to give a concert for the kiddies." He said, "Tomorrow we are having the concert. Bring your dog up." I brings me dog up. The kiddies [21] were all right on the top deck, first class compartment. I took a blackboard and got my chalk out and wrote sums on it. I told the children all to sit

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down. I cannot tell you exactly what sums, but I wrote sums on it. I think there must have been three and four and two and three and two and two, something like that, and I wrote them sums on the board and I pointed to the first kid. I always tried to divide the boys and girls on different sides. So I went to him and I said, "Now, could you tell me how many two and two makes?"

"Yes, two and two is four."

"Now, I am going to ask Pudsy to tell you how many two and two are." So Pudsy was sitting up in a little chair, and I said, "Pudsy, will you tell this little lady here how much two and two is?"

Pudsy barks four times.

I said, "Is that all right?"

Big clapping. I turns over and said to the little boy, "Would you like to ask him one?"

"Well, could you tell me how many three and three are?"

"All right. I will tell him for you. Pudsy, tell this little boy how many three and three are." Six barks.

Now, then, I said—I held up my hand and asked how many fingers I had on one hand. They all **shouted, "Five."**

"Now, I am going to ask my dog how many fingers I have got on my hand." [22]

I said, "Pudsy, how many fingers have I got?"
Five barks.

I said, "How many fingers am I showing you now? Can you tell me?"

(Deposition of Bernard Mitchell.)

They said, "Seven."

"I am now going to ask the dog to tell you. "Pudsy, tell them how many fingers there are."

Seven barks.

I done all the tricks then, which I just can't recall, and the purser came along there and thanked me very much and was much obliged for my coming along with the dog and the dog show. So I had the show for the big people for all the ship, all the big people on board the ship. I think it was the following night. So I was brought up then to the purser to do the show on the boat. Well, I suppose it was on the salon. There was a great big place down there and all the people on board the boat was invited down to that place. I brought the dog there to do the dog tricks and put the cards out. I show them to the people in the room and asked them—I cannot tell you exactly what card it was, but I think one of them was a seven. I said, "Now I am going to ask Pudsy to tell us how many spots there are on the card. Pudsy, you tell these people how many spots are on this card." He barked seven times.

I done more tricks. I put three pieces of cake down. I said, "Now, I am going to tell the dog to take one piece." [23]

I put some down and the dog was sitting on the chair. I said, "Pudsy, go and take one piece of cake."

The three pieces were close together, right close

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together. So Pudsy comes and takes one piece and comes back and sits on the chair.

I said, "Pudsy, go and take another piece. Leave one."

So he goes and he takes the other one. So I told him, "Go and take the last one." And he goes.

Then I said, "Anybody that wants to come up for to test the intelligence of this dog in obedience, I will offer this cake to you. Before you give it to him, I will give him a piece of it and then you give him that piece there. I will tell him not to take it off of you. I am going to tell him not take it off you."

I said, "Anybody can come up." So I don't know, I can't recall now who volunteered on that, but I said, "The dog will do it." I said, "To prove this—" I put the cake down on the floor. I said, "Pudsy, don't be taking that cake until I tell you to take it." The dog is just sitting there. He didn't touch it.

I said then, "Go on, take the cake." He goes and takes it. I am not sure whether it was the purser or the butcher here that offered the cake to the dog, I am not sure which.

I said, "Put him to the test."

Pudsy wouldn't take the cake. I said, "Pudsy, go and take the cake off him." So he goes and takes it. [24]

After that I could have gone up and down the boat with him any place and got all the facilities. I could go in any time at night to see him. I used

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to go at night before I retired to see if he was all right and up in the morning to see if he needed anything.

Q. Were you paid anything for those shows?

A. No, nobody paid for anything. No, it was just on account of the *Mauretania*, you see, and the staff.

Q. Well, all right. You got to New York. Now, did you have your railroad tickets to Los Angeles? Did you buy those in Ireland or did you get those in New York?

A. No, we got our tickets for ourselves from Belfast to Los Angeles and all they would give us was tickets, that is, for the dog, was to New York. They said they never shipped a dog.

Q. How did you get the dog and yourselves on the train in New York?

A. Well, we went down in a taxi to the station. We went into the office. I inquired about the dog. I told them this was a very valuable dog and I wanted to know all about the shipment. I never put him on this train before, so I wanted to know.

Q. This is the baggage room, is it?

A. Yes, it must have been. There was a man at the counter taking charge of orders. I asked him, "Can we be able to get on this train with him? Will I be able to get [25] in beside this dog, as he goes along. Can I go in with him whenever I want to?"

He said, "Yes, you will."

I said, "Is that right?"

(Deposition of Bernard Mitchell.)

He said, "Yes, you will be putting him in there and your seat will be pretty near the dog, so you won't have to walk far."

Q. They wouldn't let you have the dog on the car with you?

A. Well, not at that station. It finished up that the dog—Well, I will go on with my story. You see, I want you to get the whole story, actually. I know it is pretty long, but that is the way with all the details.

So the dog went on the train. I went in there and there was a man inside that wagon. I give him my dog. I says to him when I was giving the dog to him, "That is a very valuable dog. Can I get in to see him? That is a trick dog."

Well, then, he said, "Yes. Any time at all."

I said, "That is all right." So I give him the dog. So I comes right up again and gets in the carriage and sits down. I look down and the door of the baggage car was wide open. I see that Pudsy was sitting down there. I goes down and pats him. I said, "What is it? Pudsy, you are quite safe here."

I said, "Is this where he will be? Can I get in and [26] out? I know I am asking you so often, but I want to know before you close this door."

He says, "No, you can get in and out. That door will not be closed." He said, "You can get in and out."

So the dog went on ahead. I don't know the time, and the man came out to me and he says, "I been on this railroad a long time and I never seen any

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dog like that dog. That dog is no trouble. He never gives no trouble. He hasn't given a bark or any kind of disturbance." He said, "I tell you, you take him out if you want to and let him sit beside you."

Q. How long was that after you started?

A. A long time. It was a long trip from New York to Los Angeles. It was quite a long while. I couldn't tell you how long. So he allowed the dog to be out with me. He says, "Bring him out with you." I bring him out on the seat. He said, "Sure. That dog you can bring anywhere. He gives no trouble."

I brought him out on the seat and he sat beside me. The checker came up the train and he sees the dog and passes by. And then a time after that he comes up the train again. Some people had got on the train and had objected to the dog sitting beside me to the ticket man, and he says, "This dog had traveled," he says, "from New York and has given no trouble, either beside him or in that baggage car," he says, "so I can't put him off. He is sitting there. There is no [27] complaints and no disturbance." He says, "He is just sitting there, and I see no reason to put that dog off."

He came down to me and said, "Do what you like."

Q. The dog rode with you to Chicago?

A. Oh, all the way he rode to Chicago with me, yes.

Q. Well, now, going back to New York, didn't

(Deposition of Bernard Mitchell.)

you have to sign an evaluation slip in order to get the dog on the train, like this slip here that I show you, this valuation slip?

A. No, I don't remember seeing that.

Q. Didn't you get a baggage check?

A. Check? What kind of check is that?

Q. Well, it would be something like this (indicating).

A. Yes, I imagine I got something like that. I imagine I got a check or something.

Q. Now, at the time you got that check, didn't you sign this valuation slip?

A. No, I didn't sign any valuation in New York at all.

Q. Did your wife sign one?

A. I couldn't say.

Q. Were you both together in New York in the baggage room? A. Yes.

Q. And with the dog?

A. Yes. The man kept telling me all the time while [28] he was writing, "Don't forget and tell me," he says, "whenever you are on television with this dog. I want to get my kiddies up to the television and tell them I shipped that dog for you." That is what he said to me.

Q. You don't remember signing any slip of any kind? A. No.

Q. Did you sign anything there?

A. No, I can't recall.

Q. Did your wife sign anything there?

A. I couldn't say.

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Q. Well, you were right together, weren't you?

A. Well, I don't know. I couldn't say for sure whether she was or not.

Q. Well, did you have a crate for the dog in New York? A. Yes.

Q. You put the dog in the crate? A. Yes.

Q. Was it in the crate in the baggage car?

A. Yes, for a time.

Q. How did you come to buy the crate?

A. Well, I inquired in New York from a friend—well, he wasn't a friend, just a person whom I was talking with, but I asked, "Where can I get a dog crate?"

He told me, "Downtown," he says.

Q. How did you happen to get a dog crate? How did you know that you needed a crate? [29]

A. They told me for shipping.

Q. Who told you?

A. This person, you see. The people I was with in New York just stopping at.

Q. Just friends?

A. Just friends, yes. They told me I would have to get a crate, because I had no crate coming from Ireland. We didn't use any crates in Ireland.

Q. So you got a crate?

A. Sure. So I got a crate.

Q. You took the dog up to the station, Grand Central Station? A. Yes.

Q. And went into the baggage room. Was the dog in the crate when you went into the baggage room?

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A. No, I walked into the Grand Central Station with the dog on a leash and the crate in one hand, and the dog goes over to the——

Q. You went over to the baggage room?

A. It wasn't a room. Just a big counter along the platform with a man behind it.

Q. There were bags and things behind it?

A. Yes.

Q. Did you put the dog in the crate?

A. Where?

Q. At the counter. [30] A. At New York?

Q. Yes, at New York.

A. Yes—No. I said, "What is the procedure? What have I to do?"

Q. Never mind the conversation. What did you do?

A. I brought my dog on right down, you see.

Q. Where? A. To the baggage car.

Q. On the train? A. Yes.

Q. You still had him on a leash?

A. Yes.

Q. You had the crate under the other arm?

A. Yes.

Q. You took him right down to the baggage car?

A. Yes. So I takes him out to the baggage car and the man in charge there, I think he said, "He has to go in the crate."

"O.K.," I says, "put the dog in the crate."

Well, he look at him. He says, "He seems quite all right. I don't think it will be necessary to keep him in this crate."

(Deposition of Bernard Mitchell.)

I says, "He is nice. I will be here and I will be in there."

And he says, "That is all right."

Q. Did he stay in the crate? [31]

A. Not very long. I think he says, "Well, just put the leash on him. Tie the leash there. That is sufficient for that dog," he says. He says—and I says, "There is the crate there anyhow, if you need it."

Q. And you left the crate there? A. Yes.

Q. Where was this? Was there any check put on the crate?

A. Well, I couldn't say if there was a check on the crate or not.

Q. Or a check on the dog? A. Well, I—

Q. You remember getting one part of a check, don't you? A. Yes.

Q. Then how about this other part with the string on it?

A. I think that must have been tied on the crate or something.

Q. Well, was it on the crate?

A. Well, now, when I come to think of it now, I think it was on the crate.

Q. Well, it should be.

A. Well, you see, it is quite a time element since it happened, you know.

Q. All right. Then when you got to Chicago, the dog [32] was with you? A. Yes.

Q. Where was the crate at that time?

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A. The crate was in the baggage car.

Q. All right. When you got off at Chicago, did you get the crate out of the baggage car?

A. I got the crate.

Q. You had to change to another station, didn't you? A. Yes.

Q. You went over there by taxi, I suppose; is that right? A. Yes.

Q. About what time did you get to Chicago?

A. Well, now, it was Eastern Time and summer-time back East.

Q. Well, about what time of day?

A. Let me see now. Oh, I suppose it was about around half of 4:00 and 5:00, I think, I am not sure.

Q. How long did you have to wait for the other train?

A. Well, the only thing I think is that it was leaving shortly after 6:00.

Q. You had about an hour and a half altogether in Chicago; is that right?

A. Not an hour and a half, no. I think it was—well, we had a taxi, you see. It was all arranged. So many people going on the train and the taxi was bringing people [33] back over here and I would say 10 or 15 minutes at the Chicago Station after getting off the New York train before we landed over there. Then it took about a few minutes to go by taxi over to the Chicago Station.

Q. Then when you took the taxi over, did they put you out by the baggage room?

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A. No, they left me on the side of the station, you see, inside.

Q. Oh, I see.

A. Where all the people get off.

Q. And the dog came with you? A. Yes.

Q. On the leash? A. Yes.

Q. You had your crate under your arm?

A. Yes.

Q. Well, did you all go to the baggage room then?

A. No, we didn't all go to the baggage room. We went up to the station.

Q. Tell us what happened there in that station.

A. We met a while up the station. My wife went over to inquire just all the particulars about that transportation of the dog down to Los Angeles, you see. I was away at the time. I think I was down at the rest room. She went on ahead to inquire.

Q. What conversation did you and she have about her [34] going over and finding out about it?

A. I told her I was going down to the rest room and I did not give her the dog. I took her to the next room with me and she went over.

Q. Well, did you ask her to find out?

A. Well, I told her to find out the particulars of what I have to do with this dog before I give him over.

Q. You went over to the rest room?

A. Yes.

Q. And she went to find out the particulars?

(Deposition of Bernard Mitchell.)

A. Yes, the particulars.

Q. What happened then?

A. So I came back with the dog and when I came back, I waited for her to tell me particulars. A man calls me over. I see him calling (indicating).

Q. Was the man by your wife then?

A. Yes, the man must—yes, he was with my wife there.

Q. Where was your wife?

A. She was over at the baggage counter.

Q. By the place where this man was?

A. Yes.

Q. Where were you when he motioned to you?

A. I was quite a distance, just a way—at the far end of the counter.

Q. About how far?

A. Oh, I suppose it must have been 15, 20 feet away. [35]

Q. Did you have the crate at that time?

A. Yes.

Q. Had you been carrying the crate all the time?

A. Yes, I had the crate in my hand and the dog on the leash.

Q. All right. Just what happened then?

A. Well, he called me over and he says, "This your dog?" I says, "Yes."

You know, he was quite abrupt. He seemed to be all in a hurry and all confused. I said, "He is a very valuable dog. He is a trick dog. Remember

(Deposition of Bernard Mitchell.)

that. He is a trick dog. He is a very valuable dog."

He says, "Well, all right. We will be careful with him anyhow."

I says, "No matter what you do with him, be careful with him because that is a very valuable animal. I brought him all the way from Ireland and I am going to see him safe. Be careful with him."

He says, "Come on. Put him up." I put the dog in the crate and I handed it up to him. I says, "Is that all right?" He says, "That is all right."

I said, "Where is the crate going? Where is he going now?" I said, "I want to watch this dog. Very valuable dog. Trick dog. Very valuable. That dog is worth more," says I, "than—well, he is—money just couldn't buy him. Be careful. I want to see him right to the end." [36]

He said, "You will see him where he is going now." He says, "There is a man coming in here to take him and he is going to bring him right there on the truck to put him in the baggage car."

I says, "Will that be long?"

He says, "No. The train is going right out." He says, "Only a few minutes here."

I says, "What is the rush? What is all the rush? After all, that is a valuable dog. Remember that, man. And I want to see that dog. Very valuable. That is a trick dog. Be careful when you are handling him."

He says, "Well, all right. You will see him."

(Deposition of Bernard Mitchell.)

I says, "Will I be able to get in to see him? I want to accompany this dog on the train all the way down to Los Angeles. Can I do that? I want to know who is in charge to look after the dog while he is on that train and I want to be there. I want to be there to look after that dog and to give him any attention that he wants, such as fresh air or a little water or a little something or ventilation and maybe a little walk, if the train stops. If I get that opportunity, I want to know all that. Can I do that?"

He says, "Yes, you will be able to do that."

I says, "Will there be a man in charge?"

He says, "There will be a man in charge with the train and looking after him." [37]

I says, "Will I be able to get in to see him?"

He says, "Yes, you will."

I says, "Be careful with him, anyhow. He is a valuable dog. Watch him because I am going to travel with him if I can get in with him."

So the dog was brought around and I watched. He left this place, the counter here, and I walked over and he gave me the directions what way the truck would come and I was watching for the truck. The truck came up to the platform. There was a man wheeling it on—the baggage was all stacked up on it, and I looks and I see the crate that the dog was in turned upside down, you see. I rushed over and I said, "Here, just a minute. Stop that truck. There is a valuable dog in this truck case. That is a trick dog. He is upside down. Stop that.

(Deposition of Bernard Mitchell.)

If you can't take this little time to straighten it, I am going to remember that. That is a valuable dog in that case. That is a trick dog. He is going to Hollywood and is going to make pictures, that dog."

He says, "That is your trick dog?"

I said, "Here is the record with him there. Here is the record with him. I am going to prove it," says I. I says, "So fix him up. So fix the dog up." And I walks up beside it and holds the crate up. I said, "That is the way, you know." I followed him right up to the baggage car with the dog. I watched all the luggage going in and when [38] it was coming to my turn with the crate, I lifted the crate. I said, "Wait a minute before you put that dog in there. Can I get in with that dog?"

He says, "Oh, yes. You can get in."

I says, "Will there be a man in charge of this baggage car and start looking after this dog?"

He says, "Oh, yes, there will be a man in charge and he will look after it and do everything for it."

I says, "Will I be able to get in again? Can I get in with him and look after my dog, too? I want to travel with it. I am going to go. I am going to stay with my dog in the baggage car. That is a valuable dog. That is a trick dog. That is Pudsy, the wonder dog of Europe. I brought him all the way from Ireland. I am going to deliver him safe to Los Angeles. He has traveled from New York," says I, "and never turned a hair from him, from New York to Chicago."

(Deposition of Bernard Mitchell.)

I says, "I want him fresh as a daisy. I want to bring him to Los Angeles the same way."

He says, "Oh, well, you will get in all right."

I said, "Are you sure now? Because I don't get in to see that dog, if I can't get to see that dog, he is not going. I am not going. There is nobody going if I don't get on there."

So he said, "That is all right. You will get in. And there will be a man to look after him."

I said, "Thanks a lot, man. Thanks very much. Thanks [39] a million. As long as I know everything is all right, that I can get in to see him and knowing the dog is all right, I am all right."

So I thanked the man again and said, "Maybe you might see him on television."

Q. When you left, where was the dog?

A. Where I left it in the baggage car.

Q. Inside the car and in the crate?

A. Yes, in the crate.

Q. Did you see where he went?

A. Yes, sitting on the inside on the crate. So I left that dog. After I left it, I come right up and got into me seat. My seat on the train was pretty near the baggage car. I was just pretty lucky. I was so elated I got so near the baggage car so I could get in the same as I done from New York to Chicago. I give nobody any trouble seeing that the dog was safe and everybody was happy and satisfied.

Q. I think you have told us the rest of the story in your answers to the interrogatories and so on

(Deposition of Bernard Mitchell.)

when you were in Chicago there. Did you get another check for the dog?

A. Well, there was a check. The man put a check on the crate.

Q. You saw him put a check on the crate?

A. Put a check on the crate. [40]

Q. That was when you put the dog in the crate?

A. Yes.

Q. Wait a minute. That was after you put the dog in the crate and put the crate up on the counter; is that right? A. Yes.

Q. Then he put the check on the crate?

A. Yes.

Q. Did you sign a valuation slip like that?

A. No, I signed nothing.

Q. Did you see anybody sign that?

A. No, I didn't see anybody sign it.

Q. Is that your wife's handwriting?

A. Well, that could be my wife's.

Q. Well, you know your wife's handwriting?

A. Well, it could be my wife's. It is not mine.

Yes, it is pretty like my wife's handwriting.

Q. You didn't see her write that?

A. I did not.

Q. Did she tell you that she had written it?

A. No.

Q. Did she ever tell you she wrote it?

A. After all this had been done, my dog was dead.

Q. But I mean——

(Deposition of Bernard Mitchell.)

A. Not beforehand I didn't know anything about it.

Q. But since then has she told you that she wrote it? [41] A. Yes. Oh, yes.

Q. When did she write that, do you know?

A. Well, I don't know. She must have wrote it while I was away.

Q. Did you get a check, a portion of this check, at the time that he put the one portion on the crate?

A. I think I have a portion of the check, yes. I think I have a portion.

Q. You still have that?

A. Yes, I think so.

Q. Did you have any conversation at the baggage counter other than what you have told us about?

A. No, no other conversation. Mostly all of it was just about the dog.

Q. Did you have any conversation with your wife while you were at the baggage counter there?

A. No. A man was—I mean, the man was in a hurry and rushing us on. He said the train was going out in a few minutes and he hadn't all the time to wait here. He began talking like that and saying, "Come on," rushing us.

Q. Well, O.K. Let us stop here and then if I have some questions later, I will get back to it later, but we will see what we can do with Mrs. Mitchell.

A. That is all right. That is as far as I left the dog in the car. [42]

(Deposition of Bernard Mitchell.)

Q. We have the rest of that in the interrogatories.

/s/ BERNARD MITCHELL,
Witness.

Subscribed and sworn to before me this 20th day of September, 1954.

[Seal] /s/ GEORGE H. CHULA,
Notary Public in and for the County of Los Angeles, State of California. [43]

State of California,
County of Los Angeles—ss.

I, Edward A. Oreb, a Notary Public within and for the County of Los Angeles and State of California, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition, to wit, Bernard Mitchell, was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting under my direction.

I further certify that it was stipulated by and between counsel that said deposition may be read, corrected and signed by the witness before any Notary Public.

I further certify that I am not interested in the event of the action.

Witness my hand and seal this 12th day of July, 1954.

[Seal] /s/ EDWARD A. OREB,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed October 29, 1954. [44]

[Title of District Court and Cause.]

DEPOSITION OF MRS. BERNARD MITCHELL
a witness herein, taken on behalf of the defendants,
at 2 p.m., Tuesday, June 29, 1954, at 422 West
6th Street, Los Angeles 14, California, before Ed-
ward A. Oreb, a Notary Public within and for the
County of Los Angeles and State of California,
pursuant to the stipulation annexed to the deposi-
tion of Bernard Mitchell.

Appearances of Counsel:

For Plaintiff:

MONROE & CHULA, By
GEORGE H. CHULA, ESQ.

For Defendants:

E. E. BENNETT, ESQ.,
EDWARD C. RENWICK, ESQ.,
MALCOLM DAVIS, ESQ.,
JACK W. CRUMLEY, ESQ.,
DONALD M. LADD, JR., ESQ., By
MALCOLM DAVIS, ESQ.

MRS. BERNARD MITCHELL

a witness herein, having been first duly sworn, deposed and testified as follows:

Direct Examination

By Mr. Davis:

Q. Now, I will take your deposition, Mrs. Mitchell. A. Yes.

Q. Would your testimony be pretty much the same as that of your husband up to the time that you got to New York? A. Yes, exactly.

Q. Can you think of any differences?

A. No. You want me to start it at the beginning and say it?

Q. No, please don't.

A. I am not going to. I am not going into as much detail.

Q. But you listened to your husband as he told us about it, didn't you? A. Yes.

Q. In general your story would be just the same as his until you got to New York, would it not?

A. Yes.

Q. Now, when you got on the train in New York, do you remember that there were any slips signed such as this [2*] valuation slip, that is, in New York?

A. I don't remember signing anything. One thing I can tell you, if I ever signed anything, it was twenty-five points for a dollar. I knew perfectly I wouldn't have done it. I don't remember saying——

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

(Deposition of Mrs. Bernard Mitchell.)

Q. Listen to my questions. I am speaking to you about New York; do you recall? A. Yes.

Q. You have seen this valuation of baggage, haven't you? A. Yes.

Q. I am showing you a photostat of it now. That was in Chicago. Did you see a similar slip in New York?

A. I absolutely don't know. I don't know. I can't tell you.

Q. Now, were you and your husband together when the dog was checked in New York?

A. We were. We were. You had the dog do tricks for the man.

Q. Wait a minute. You forget he is here (indicating).

Just answer us.

A. Yes, I am sorry.

Q. Were you and your husband together all the time when the dog was checked in New York?

A. Yes.

Q. Did either of you sign one of these slips at that [3] time, do you remember, or your husband? A. I can't remember.

Q. You can't remember. Do you remember getting a portion of a baggage check in New York?

A. I must have got tickets. We must have. I forget. They wouldn't have let us in without it.

Q. That is right. Can you remember it?

A. No.

Q. Well, when you got to Chicago, as I recall,

(Deposition of Mrs. Bernard Mitchell.)

your husband got the dog. Well, the dog was with you on the train, wasn't he?

A. Yes, he was with me. He was with me from the train down to the baggage counter, just like over here to here that dog was a distance away (indicating). I could see it, him and the dog.

Q. Was he in the baggage car? A. Yes.

Q. The dog was in the baggage car?

A. For a while. While we were on the train, they said, "This is your seat." And there was the baggage car there and the door was opened and I could see him.

Q. When you got to Chicago, was the dog in the baggage car? A. Yes.

Q. How did you get him from the baggage car?

A. Barney went in for me and Barney brought his crate and him outside, out by the door, and I come by this [4] other one with the cases.

Q. You brought the cases and he brought the crate and the dog? A. Yes.

Q. Then you got in a taxi and went over to the station in Chicago?

A. These railroad people had this taxi ordered. We had nothing to do with it. So when we came the length of that other station, Chicago station, Barney went down to the toilet and I went over to this—well, a big station we were in. I went over to this place, and there was a man and I said to him, "Mister——"

Q. What did you say?

A. I says, "Whereabouts do you get this train

(Deposition of Mrs. Bernard Mitchell.)

for Los Angeles, because my husband has a very valuable dog and wants to get tickets for it," I said, "to go to Los Angeles." I must have been talking slow, because he says, "Come on," to me, "come on. I have to put all these things on the train. He had a whole lot of attache cases and everything." He said, "Are you the owner of the dog?"

I said, "No, my husband is the owner." Barney came in and he says, "Has your husband the tickets?" He says, "Show me the tickets."

And I went and opened my purse for the tickets. I just gave it all to him. He takes what he wants out of it. He says, "Come on." He gave me a big thing about that [5] height (indicating). He says, "Write your husband's name and destination, where you are going. Where you are going to."

I wrote it down and gave it back to him.

Q. Is this the slip of paper there?

A. I don't know.

Q. Instead of a copy, you know, that this is a copy?

A. I don't know what the color was. I can't remember what this thing was like, but I remember seeing it. I gives it back. There were directions on it. He says, "Here, put 25 here." I put 25 down and gave it back to him, and the man never said what it was or what it wasn't.

Q. Now, did you read that slip?

A. I didn't have time to hardly write it, let alone read it, Mister.

(Deposition of Mrs. Bernard Mitchell.)

Q. Where did you write? What did you have it on?

A. I think I had it on a table or whatever it was. Kind of a counter. I don't know what it was.

Q. Was it just one single sheet of paper or was it on a pad?

A. I forget. I don't know. I couldn't tell you as to what it was on. I think it was a book or something.

Q. Well, I will show you this little slip of paper here; is that the slip that you wrote on?

A. It must have been, but I forget what color it was or what it was like. I don't remember nothing about it, [6] only that I wrote Barney's name on it and the man told me to write it.

Q. And that is your handwriting, is it, on that slip? A. Yes.

Q. And this figure "25" there, is that in your handwriting?

A. Yes, the man told me to put "25." I never even seen what it was or anything else.

Q. Did you ask him what it was for?

A. I never asked him, to tell you the truth. He was an awful man. He was a cheeky man.

Q. Did you read anything on it or any of the printing that was on there?

A. Never did. I signed it and gave it back to him and he gave it back to me. He says, "Put your husband's name and address," and I put it and wrote and gave it back to him. He gave it back

(Deposition of Mrs. Bernard Mitchell.)

to me and he says, "Put 25." And I put 25 and gave it back to him. That was all I done.

Mr. Davis: I would like to attach a photostat of this.

Mr. Chula: That would be satisfactory. You are referring to what I would assume purports to be the original and you say it is the original and I would assume it would be the original.

Mr. Davis: Yes, so I would rather not put this in the deposition.

Mr. Chula: All right. We will put a photostat on it [7] and that will be satisfactory.

Q. (By Mr. Davis): Where was Mr. Mitchell when you wrote these things on this valuation slip?

A. He was way over there, doing something with the dog.

Q. Doing what?

A. Doing something with his muzzle or whatever you call it. Doing something to Pudsy. He just come in from the train and he was over here, oh, by the big long wall.

Q. About how far away from you was he at that time?

A. Well, only taking a guess, I would say from here (indicating) way over to the middle of the road there.

Q. Oh, about 60 feet or so, would that be right?

A. As far as in length. I can't tell you how far it was.

Mr. Chula: Tell us the distance by using this room.

(Deposition of Mrs. Bernard Mitchell.)

The Witness: Oh, it was far more than this.

Mr. Chula: How much more, twice as much?

The Witness: I can't swear to it. I don't want to tell a lie. Well, it was about twice as much as this.

Mr. Davis: Well, that would be about 30 feet, I think.

Mr. Chula: Somewhere around that.

The Witness: I called him and I said, "Barney, I got the tickets." Do you remember that?

Q. (By Mr. Davis): You called for Barney?

A. I said, "I have got the tickets." And the man——

Q. When did you call to Barney? [8]

A. When the man called him for to get the dog, this man called him.

Q. When did you call for him?

A. I didn't call for him, for the man to call him. I said, "Barney, I got the tickets." And I talked to him about putting in the thing and the crate and then he had a talk with me. He said, "Nothing will happen to him while we are waiting at the side of this big place." He said the dog would come in this big thing. So the minute we seen him coming, I said, "Barney, there is the crate upside down," and he went over to them. Then after we got in the train, after a while, Barney went out to the man. He went out to the man who was selling tickets or whatever he was doing, the porter, you know, the man that goes up and down the train, that man. Barney asked him if he could get to see the dog.

(Deposition of Mrs. Bernard Mitchell.)

The man said to him, "The baggage car is locked. It won't be opened until we get to some place," and Barney had told him what the dog was worth and Barney comes up to me and he says to me, "This man won't let me into the baggage car."

Q. We got all that. So you never mind about that. That isn't necessary because you already told us all that in these other interrogatories.

A. All right.

Q. Now, have you told us the whole conversation that you had with this man at the baggage [9] counter?

A. Yes. I says to him, "Mister, whereabouts do you get the train for Los Angeles?" I says, "My husband has a very valuable dog and wants to get the particulars of it."

I said, "I want to know about every facilities."

He says, "Where do you come from?"

I said, "New York."

He says, "Have you got the tickets? Where is it? I have to have the tickets."

I said, "I think I have the tickets. I think I have them." I gave them to him. He asked me for to sign the ticket and I took the whole lot out of my purse and he took whatever he wanted. He wrote something and I don't know what he wanted. He told me how much money it would be, but I forget how much it was that I gave him to get Pudsy's ticket.

Q. Did you pay him the money?

A. I gave him the money.

(Deposition of Mrs. Bernard Mitchell.)

Q. When was it that you signed this slip?

A. After he got the tickets off me. He got this ticket.

Q. Was it before or after you paid him the money?

A. I think it was after I paid him the money that he asked me to sign this thing. I can't swear to it. I think it was after. He said, "Sign this, your husband's name on that."

And I signed it. He told me to put the address on it. [10] I did and gave it back to him and he gave it back to me and he said, "Here, put 25." And I wrote it down and gave it back to him. He was in an awful hurry.

Q. How long did you take, all the time, from the time you first started to talk to him until you left the counter?

A. It couldn't have been three minutes, Mister, where the man had no time to breathe. He annoyed me that much. I didn't know what I was doing.

Q. Did he punch your ticket?

A. Punch it? I don't know.

Q. With a BC on it?

A. I couldn't tell you.

Mr. Davis: I think that is all.

Mr. Chula: That is all.

/s/ BULA MITCHELL,

Witness. [11]

State of California,
County of Los Angeles—ss.

I, Edward A. Oreb, a Notary Public within and for the County of Los Angeles and State of California, do hereby certify:

That, prior to being examined, the witness named in the foregoing deposition, to wit, Mrs. Bernard Mitchell, was by me duly sworn to testify the truth, the whole truth and nothing but the truth;

That said deposition was taken down by me in shorthand at the time and place therein named, and thereafter reduced to typewriting under my direction.

I further certify that it was stipulated by and between counsel that said deposition may be read, corrected and signed by the witness before any Notary Public.

I further certify that I am not interested in the event of the action.

Witness my hand and seal this 12th day of July, 1954.

[Seal] /s/ EDWARD A. OREB,
Notary Public in and for the County of Los Angeles, State of California.

[Endorsed]: Filed October 29, 1954. [12]

[Title of District Court and Cause.]

REPORTER'S TRANSCRIPT OF
PROCEEDINGS

December 12, 1955

Appearances:

For the Plaintiff:

GEORGE H. CHULA.

For the Defendant Union Pacific Railroad
Company, a Corporation:

MALCOLM DAVIS.

* * *

The Court: Maybe it will help you if I tell you what I think is your stumbling block.

Mr. Chula: Surely.

The Court: I don't like these theories by which you can go out and file a tariff somewhere and keep it under a counter and yet submit the world to it.

If you go on an airplane flight between here and Europe, for instance, you could never get more than \$9,000.00 damages for loss of life, because of an international convention that sets that up, no matter how highly you might evaluate your life and inform the airplane company of it. Those things are generally, to my personal conscience, vicious. But there are places where they have legal validity.

Now, in your case, Mr. Mitchell was called upon to value the dog upon a declaration, which was the declaration that was provided, as part of the regular routine of checking baggage by the carrier. If the

dog was valued at \$25.00 or less, he got carried, as I understand the record here, as incidental passage of other things, namely, Mr. Mitchell, although I have never been able to figure the \$8.33, what that paid. But Mr. Mitchell valued the dog at \$25.00.

Now, if he had valued the dog at what he says it was [5*] worth in his complaint, he would have had to pay an additional sum for passage. Is he entitled to more than the value he placed on it in his declaration? Is he not estopped by the value he asserted in the document given to the railroad company?

Mr. Chula: I would say this, your Honor: First, our contention is he is not estopped, and I say—when the question of estoppel comes up, I was going to seek to point out to the court that I believe the railroad company is estopped from claiming the valuation of \$25.00 for these reasons.

Now, if we can just go over the facts at the counter. Mrs. Mitchell goes up to the counter and asks about shipping the dog and tells the man it is a very valuable dog, and so on. We have the information in the deposition, as to what took place at the counter.

The man at the counter advises her, let us assume—let us assume she knew what she was doing when she wrote “25” down there. She knew it was \$25.00 and she was valuing it at \$25.00.

Now, the question of the placing of the sum of “25,” say it was done, and assuming it was done, \$25.00 on the valuation slip is not a statement that

*Page numbering appearing at top of page of original Reporter's Transcript of Record.

this is the value, but that this is the limitation of liability that you will take. Assume it was so.

Now, Mrs. Mitchell, if she did write down and did intend [6] it to be \$25.00, did so after being advised—she was willing to accept—this is on assumed facts, contrary to the true facts, but assuming them to be so, she did so limit her liability to \$25.00 after being advised by the baggageman that Mr. Mitchell, or that the parties would be able to go into the baggage car at all times to care for the dog, to feed it, to water it, to otherwise care for it, and that there would be someone in attendance in the baggage car to look after the dog.

Now, your Honor, the baggage notation I do not believe is a statement of value. I say it is a limitation of what you are going to be able to claim.

If you or I were in that circumstance with Mr. Mitchell and should determine, "All right. They are going to let me get into the baggage car any time I want to feed and water my dog. The man told me so. That is what I can do. He said, 'There will be more attendants. We have carried more valuable things than these.'" And you and I were sitting on this side of the counter (indicating) and we are from Ireland and we just came over in this big world—we are looking all over it, it is a big thing, and get in that station—The first time I got in the Service I thought I was lost in the station at Chicago.

In all fairness, we are sitting on this side of the counter and we say that under those circumstances, assuming [7] it to be so, taking the worst, we say,

“All right. If I can go in and see my dog, I can water him, I can feed him, I am not worried about my dog. If he dies it is my fault.”

So I will say, “I will limit your liability to \$25.00,” and I write down “25”——

Your Honor raised the point, is Mr. Mitchell estopped because his agent, if it can be construed as agent—I think under our laws here I think it would be, and I think probably counsel is strong on that point—Mrs. Mitchell writes the \$25.00 down, can he be estopped to later claim a greater amount?

If we are going to use these rules of estoppel and things like that, surely, your Honor, estoppel would apply to the railroad company, because we wouldn't. It is a question of fact for determination.

They told the man it was a valuable dog and they came over here for the express purpose of exhibiting this animal, and to say it was worth \$25.00 is flying in the face of reason. They had spent hundreds of dollars getting over here for this purpose.

Now, if we hadn't been able to get in this baggage car, we wouldn't have traveled on the train at all, if we had known it was somebody else taking care of the animal.

Surely, a fair opportunity would have been presented to the party putting down the “25,” that they are making a [8] choice here, that they are taking a certain amount of risk, and, therefore, they wouldn't have limited the liability to twenty-five.

I think that the railroad company is estopped,

also, so far as the ticket is concerned, because of that reason.

In other words, the \$25.00 is not a statement of value. It is a statement of limitation of liability.

Can it be said that we would have limited liability if we had not been misled—I say “Misled”—or defrauded, or however the statement may be; misinformed by the agent for the railroad company?

Thereby, I think the question of whether the “25” was put down there is sort of canceled out on both sides. There is an estoppel both ways.

If we are going to use—but, as to the railroad company, they would be estopped to claim this \$25.00 limitation. For instance, I think—for example, your Honor, if we were going to ship something valuable and we were told it was going to be in a certain type of car that would have air, and we didn't know the facts, and we don't know the fact; we are sitting on this side of the counter (indicating), and the man says, “Sir, the animal is going to have a lot of air,” and they put him in something that is sealed tight, so it is just a matter of time that the heat and the exhaustion will cause the animal to die, can it be said the person who [9] chose to limit the liability to \$25.00 had a fair and ample opportunity to choose the limitation of liability? I think not.

Now, if Mr. Mitchell, assuming the \$25.00 was put there as a limitation—I will argue strongly on it, I feel strongly on it—couldn't even limit it, it was intended as a limitation, assuming everything they say is so, is true, the situation would have been

different if, after the animal got on the car, there had been someone in the baggage car to care for it. There wasn't. We had been advised there would be.

If in that situation—I can see limited liability—he got on the car, were able to get in the car and feed the dog and water the dog, all those things would have been cared for and we would have known what we were limiting our liability for, and we would have accepted that risk.

But in this case, your Honor, we were not admitted into the baggage car. We attempted at all times, as the deposition shows and as the complaint shows, to get in to see the dog; begged and pleaded all the way up and down the train, to get in to take care of this dog.

The Court: If you had set forth its true value, I should think they would have let you in.

Mr. Chula: That is what I am assuming. Just like maybe in certain other fields people just do a certain job and they [10] do a certain job. These people are from Ireland. They might look like they are funny little people. They might think they are cracked in the head, being from Ireland and talking——

The Court: I wish you had cleaned up his language a little in his affidavit.

Mr. Chula: I attempted, as best I could, to use the words he used, that is all. I don't know if there is anything obnoxious to the court.

The Court: That is the unfortunate thing in drawing an affidavit. You can't get too much color

of Ireland in an affidavit by having an Irishman trying to cast it a legal language.

Mr. Chula: I felt, maybe wrongly or rightfully, sometimes attorneys take too much freedom when they draw them for clients to sign. What I did, I just took his statement and I had the secretary take off and use it the way he had it.

The Court: What was the \$8.33 paid for? That certainly will not buy a ticket from Chicago to Los Angeles on the City of Los Angeles.

Mr. Chula: That \$8.33, your Honor, in my understanding, is paid for the transportation of the dog. Now, the only thing, under the Rules and Regulations—the only thing we have under consideration, attached to the original motion [11] under Rule 6(c), all these things we ask for—this question of the ticket, maybe I ought to stick on that.

The only necessity of presenting a passenger ticket, apparently, is not to get any free baggage for this dog, because, I don't know, possibly if I went there without a ticket they might not let me on the train, I don't know. I could probably ship the dog otherwise.

But we paid for the transportation of the dog; it wasn't free. And the only reason, I think, it would be necessary to show a ticket that we are going to, you know, indicate that somebody is going to be able to take that dog off the train.

In addition to that, it says, under Rule 6(c), that they must be "accompanied by owners or caretakers, who present valid transportation and who

will provide proper facilities for loading and unloading, feeding and watering.”

We tried to. We were there and they refused us the opportunity of feeding and watering and caring for our dog.

Assuming we agreed to a limitation of \$25.00, if they would let us do these things. They refused. How can they refuse us the right to care for our dog and still limit us to our liability? I think they have been estopped.

If they had done their duty, then the limitation of liability, assuming it were so, might be fair—given a fair and ample opportunity. [12]

The Court: Are the depositions formally in the record on this motion?

Mr. Davis: They should be. I think if we can dispose of the matter now, we should if we can.

The Court: Is it understood the depositions are formally in the record?

Mr. Chula: Yes.

Mr. Davis: So stipulated, your Honor.

Mr. Chula: And speaking of the question—I understood—we have been arguing back and forth this way—that was my understanding. I spoke with counsel. We have no objection to it and both want it that way, so far as the depositions being part of the record.

Now, I trust, your Honor, that—I think I have made my motion relatively clear on that point there.

The Court: I think I have your point.

Now, another point is this: I think, in view of

the Nothnagle case, which is a case with certain similarities, but not exactly similar, that it shows the basic trend and thought in a case of this type, and that in there must be fair and ample opportunity to choose.

Now, here we have, taking the facts as they were, so far as the plaintiff's complaint shows, and so on, Mrs. Mitchell was asked by this baggage clerk to sign the name of the owner and the address; and she did on this slip. [13]

These people are English-speaking people, that is true, but I assume that the customs, ideas and manner of living and thought and checking is a little bit different over in Ireland than here. Honesty is a characteristic of both countries, at least in its idealistic contemplation of the things it does and the requirements upon people.

Mr. Chula: That is correct, your Honor. As we go a little further among these very strong Catholic people in Ireland, truth is actually a very strong point with them, too.

So we can sort of gather from the deposition that the facts are as stated, even more so than under oath.

If you will note, your Honor, the valuation slip, it has twenty-five in numbers with quote marks on either side of it; twenty-five with little quote marks on either side of it.

I don't know whether the deposition shows it or not, but I believe it does—I can't recall exactly now—Mrs. Mitchell at that time didn't even know what the dollar sign would mean. She said she

didn't know whether it was stones or what it would be. "I don't know what it would be—" some saying they have over there. She was asked by the man.

Could it be said she had a fair and full opportunity to choose between a higher and lower rate? I think it is a question of fact and not a question of law. [14]

In this particular case it is a little unusual in that regard, that she goes up and shows the man her ticket.

He says, "Fine," and charges a certain amount of money for the dog, and then he hands her the slip and says, you know, "Put down the name of the owner."

On his affidavit he says Mr. Mitchell did this. Whether he was testifying from his own recollection or not, I don't know, when he made the affidavit. But, apparently, he was mistaken in that regard, because Mr. Mitchell did not fill out the valuation slip.

He asked her, "Write 'Mitchell, Garden Grove, California,' " and hands it back to the man.

She told the man already, "It is a valuable dog." He is put on some sort of notice to give her ample opportunity to value the dog higher.

In addition to this other field we are talking about, being able to feed the dog and water it, he hands it back and he says to put down "\$25.00," and she writes "25" and puts it in quote marks.

Does that look like the actions of a person who is putting down "\$25.00" as the valuation? This may be a slim or small question of fact, but it does

resolve itself down to a question of fact as to whether Mrs. Mitchell was given a fair and ample opportunity to choose. Our pleadings indicate she was not. And whether she did or did not have [15] a fair and ample opportunity would be a question of fact. It might be—supposed to be a question of law.

Under our general thinking, if something is down, it is down in tariff acts and so on, and maybe not clearly a question of fact. Just look and say, “Boom,” and it is a question of fact (indicating).

In the particular situation, and the information we have in our deposition, in our affidavit in opposition to this motion, it indicates there is some question of fact here. It may not be as easily discernible as in some other cases, but it gets to a point it is a question of fact.

The Court: The question of fact in the case is, was there negligence? That question is resolved by the defendants confessing negligence.

The question of fact might be there as to the value of the dog. Mr. Davis has put in a lot of comment, to which he draws from as his comment upon the deposition.

The fact that this was a pickup dog and not a pedigreed animal, that nothing was paid for it, that it was owner-trained, and so on, it has no value. The court can't go for that.

I think, if we had the actual problem of valuation of the dog, as to its real value, those would be factors to be considered, but they wouldn't be controlling. They wouldn't fix the value of the dog

as under \$25.00, as a matter of law. [16] And I can see plenty of things suggested here which, if they came into evidence, the dog might have a substantially greater value.

But when the owner goes to a baggage room and fills in a declaration, placing the value at \$25.00, this court holds they cannot thereafter collect a greater sum.

So the motion for summary judgment is granted.

I don't know that the findings are quite what the court would want to sign, but I will work on them myself.

[Endorsed]: Filed February 27, 1956. [17]

[Title of District Court and Cause.]

CERTIFICATE BY CLERK

I, John A. Childress, Clerk of the United States District Court for the Southern District of California, do hereby certify that the foregoing pages numbered 1 to 109, inclusive, contain the original

Complaint;

Answer of Chicago & North Western Railway Co.;

Motion & Notice of Motion for Summary Judgment together with Statement of Reasons & Memorandum of Points & Authorities in Support Thereof;

Affidavit of Bernard Mitchell in Opposition to Motion for Summary Judgment;

Findings of Fact & Conclusions of Law;

Summary Judgment;

Notice of Appeal;

Appellee's Designation of Matters to Be Included in Record on Appeal;

Motion for Extension of Time Within Which to File Record on Appeal;

Designation of Additional Portions of Record on Appeal by Appellant After Designation by Appellees;

Supplemental Memorandum in Support of Motion for Summary Judgment;

which, together with Deposition of Bernard Mitchell, taken at Los Angeles, California, on June 29, 1954; and 1 volume of Reporter's Transcript of Proceedings on Monday, December 12, 1955, in the above-entitled cause, constitute the transcript of record on appeal to the United States Court of Appeals for the Ninth Circuit, in said cause.

I further certify that an examination of the docket and files has been made and I cannot find where Interrogatories Propounded to Plaintiff and the Answers Thereto has been filed, as designated by the appellees in this case.

I further certify that my fees for preparing the foregoing record amount to \$2.00, which sum has been paid by appellant.

Witness my hand and the seal of said District Court, this 28th day of February, 1956.

[Seal] JOHN A. CHILDRESS,
Clerk;

By /s/ CHARLES E. JONES,
Deputy.

[Endorsed]: No. 15068. United States Court of Appeals for the Ninth Circuit. Bernard Mitchell, Appellant, vs. Union Pacific Railroad Co., a Corporation; Chicago Northwestern Railroad Co., a Corporation, Appellees. Transcript of Record. Appeal from the United States District Court for the Southern District of California, Central Division.

Filed March 11, 1956.

Docketed March 15, 1956.

/s/ PAUL P. O'BRIEN,

Clerk of the United States Court of Appeals for the
Ninth Circuit.

